TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 214.

THE TOWN OF LYONS, PLAINTIFF IN ERROR,

vs.

EDGAR MUNSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 10, 1876.

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INDEX.

	Original.	Print.
Summons	1	1
Complaint	3	1
Amended answer	49	54
Minutes of trial	61	56
Verdict	62	57
Order for judgment on the verdict	63	57
Order staying proceedings for bill of exceptions	65	58
Judgment	67	58
Bill of exception	71	59
Opinion of the court	113	76
Writ of error	127	81
Bond for supersedeas and costs on writ of error	131	81
Citation	139	83
Clerk's certificate	141	84

1, 2 The President of the United States of America to The Town of Lyons, greeting:

You are hereby summoned to answer the complaint of Edgar Munson, a copy of which is herewith served upon you, and to serve a copy of your answer on J. B. Perkins, plaintiff's attorney, at Rochester, N. Y., within twenty days after the service of this summons, exclusive of the day of service, or the plaintiff will take judgment against you for the sum of twelve thousand three hundred and ninety-six dollars and ninety cents, with interest on three thousand three hundred and sixty-six dollars and ninety cents thereof from October 1st, 1872, and on four thousand five hundred and fifteen dollars thereof from April 1st, 1873, and on four thousand five hundred & fifteen dollars thereof from October 1st, 1874, besides costs.

Witness the Hon. Nathan Clifford, senior associate justice of the Supreme Court of the United States, at Washington, this 28th day of February, 1874.

CHARLES MASON, *Clerk.*

J. B. PERKINS,
Pl'ff's Att'y

3 United States circuit court, northern district of New York.

EDGAR MUNSON
versus
THE TOWN OF LYONS.

The plaintiff in the above action complains of the defendant therein and says, that he is a citizen of the State of Pennsylvania, and is not a citizen of the State of New York, and that the said The Town of Lyons is a corporation organized under and by virtue of the laws of the State of New York, and is a citizen of said State, and a resident of said northern district of said State.

And this plaintiff further says, that under and by virtue of an act of the legislature of the State of New York, entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,'" passed May 18th, 1869, and the amendments thereto, the said defendant, on or about the 17th day of May, 1872, at Lyons, New York, duly executed its certain bond or writing obligatory, signed by the commissioners of said town, duly authorized for that purpose, and attested by the hand and seal of the clerk of the county of Wayne, numbered one, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
State of New York, County of Wayne:

TOWN OF LYONS.

No. 1.] *Seven per cent. bond.* [$1,000

Know all men by these presents, that the Town of Loyns acknowledges itself indebted unto or bearer, in the sum of one thousand dollars, lawful money of the United States, which sum it promises to pay at the Central National Bank of the city of New York, on the first day of April, in the year 1892, with interest from the 17th day of May, in the year 1872, at the rate of seven per cent. per annum, payable semi-annually

on the first days of April and October of each year, on the presentation and delivery of the proper interest warrants.

This bond is one of a series of one hundred and fifty bonds bearing even date herewith for one thousand dollars each, numbered consecutively from one to one hundred and fifty, both inclusive, created and issued under the authority contained in chapter 907 of the laws of 1869 and the amendments thereto, and under and pursuant to a judgment and determination of the county judge of Wayne County, dated May 17, 1872, duly rendered and entered of record under and pursuant to a petition of the tax-payers of said town, praying that said town issue its bonds to the amount of one hundred and fifty thousand dollars, and invest the same in the capital stock of the Sodus Bay, Corning and New York Railroad Company, a corporation duly created under the laws of this State, and under and pursuant to an appointment of said county judge, appointing and commissioning us, the undersigned, David F. Cole, W'm D. Perrine, and Dwight S. Chamberlin, as commissioners for said town, for the purpose set forth in said acts of the legislature of this State.

In witness whereof we, the said commissioners, have hereunto set our hands and affixed our seals this 17th day of May, A. D., 1872.

DAVID F. COLE, [L. S.]
W'M D. PERRINE, [L. S.]
DWIGHT S. CHAMBERLIN, [L. S.]
Commissioners.

WAYNE COUNTY, *ss:*

Registered in the county clerk's office.

In witness whereof the clerk of Wayne County has hereto set his hand and affixed his official seal.

[L. S.] ALBERT F. REDFIELD, *Clerk.*

4 And this plaintiff further says, that annexed to said bond or writing obligatory were three several coupons signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, the first days of April and October, 1873, respectively, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and coupons thereto were, for a valuable consideration, transfered to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

2nd. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 2, and being in the words and figures of the writing obligatory hereinbefore set forth, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National

Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

3rd. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 3, and being in the words and figures of the writing obligatory hereinbefore set forth, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

4th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 4, and being in the words and figures of the writing obligatory hereinbefore set forth, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons at the times the same respectively came due were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

5 5th. And for a further and separate cause of action, this plaint-

iff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 5, and being in the words and figures of the writing obligatory hereinbefore set forth, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the City of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

6th. And for a further and separate cause of action, this plaintiff says, that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 6, and being in the words and figures of the writing obligatory hereinbefore set forth, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

7th. And for a further and separate cause of action, this plaintiff saos that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 7, and being in the words and figures of the writing obligatory hereinbefore set forth, annexed to which were three several coupons signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the

place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

6 8th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 8, and being in the words and figures of the writing-obligatory hereinbefore set forth, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

9th. And for a further and separate cause of action, this plaintiff says, that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 9, and being in the words and figures of the writing-obligatory hereinbefore set forth, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

10th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 10, and being in the words and figures of the writing-obligatory hereinbefore set forth, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at

the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

7 11th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 11, and being in the words and figures of the writing-obligatory hereinbefore set forth, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

12th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 12, and being in the words and figures of the writing-obligatory hereinbefore set forth, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

13th. And for a further and separate cause of action, this plaintiff says

that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 13, and being in the words and figures of the writing-obligatory hereinbefore set forth, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

8 14th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 14, and being in the words and figures of the writing-obligatory hereinbefore set forth, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

15th. And for a further and separate cause of action, this plaintiff says, that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 15, and being in the words and figures of the writing-obligatory hereinbefore set forth, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the

place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

9 16th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 16, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1893, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons at the times the same respectively came due were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

17th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 17, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1893, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

18th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 18, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of

April, in the year 1893, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

19th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 19, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1893, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

20th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 20, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1893, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still

remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

21st. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 21, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1893, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

11 22nd. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 22, and being in the words and figures of the writing-obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1893, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff as interest on said bond the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

23rd. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 23, and being in the words and figures of the writing-obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1893, annexed to which were three several

coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

24th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 24, and being in the words and figures of the writing-obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1893, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

12 25th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 25, and being in the words and figures of the writing-obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1893, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains

wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

26th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 26, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1893, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

27th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 27, and being in the words and figures of the writing-obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1893, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bonds for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

13 28th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 28, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1893, annexed to which were three several coupons, signed by the said commissioners, each for the pay-

ment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

29th. And for a further and separate cause of action this plaintiff says than on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 29, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1893, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

30th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 30, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1893, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof

from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

14 31st. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 31, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1894, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

32nd. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 32, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1894, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

33. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 33, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1894, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of

October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

15 34th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 34, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1894, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

35th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 35, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1894, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the owner and holder thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from Octo-

ber 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

36th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 36, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1894, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

16 37th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 37, and being in words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1894, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

38th. And for a further and separate cause of action this plaintiff says, that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 38, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1894, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of Oc-

tober, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

39th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 39, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1894, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

17 40th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 40, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1894, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof

from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

41st. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 41, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1894, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demaded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff as interest on said bond the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

42nd. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 42, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1894, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bonds and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff as interest on said bond the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

18 43rd. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 43, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1894, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of

New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff as interest on said bond the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

44th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 44, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1894, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff as interest on said bond the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

45th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 45, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1894, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bonds and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff as interest on said bond the sum of $96.10, with interest on $26.10 thereof

from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

19 46th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 52, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1895, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bonds still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

47th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 53, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1895, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

48th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 54, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1895, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bonds for six

months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the owner and holder thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

20 49th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 55, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1895, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bonds still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

50th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 56, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1895, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the said National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof

from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

51st. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 57, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1895, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the said Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons. at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

21 52nd. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 58, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1895, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bonds for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

53rd. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 59, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1895, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bonds for six

months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

54th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 60, and being in the words and figures of the writing-obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1895, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bonds for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

22 55th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 61, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1896, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bonds for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof

from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

56th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 62, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1896, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bonds for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

57th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 63, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1896, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bonds for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

23 58th. And for a further and separate cause of action, this plaintiff says that, on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 64, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1896, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on

the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

59th. And for a further and separate cause of action, this plaintiff says that, on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 65, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1896, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the 1st day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

60th. And for a further and separate cause of action, this plaintiff says that, on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 66, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1896, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bonds remains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

24 61st. And for a further and separate cause of action, this plaintiff says that, on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 67, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1896, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

62nd. And for a further and separate cause of action, this plaintiff says, that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 68, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1896, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

63rd. And for a further and separate cause of action, this plaintiff says that, on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 69, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1896, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the

first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bonds and the said coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

64th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 70, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1896, annexed to which were three several coupons signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

65th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 71, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1896, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

66th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 72, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1896, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

26 67th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 73, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1896, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

68th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 74, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1896, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank, in the city of New York, on the

first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons at the times the same respectively became due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

69th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 75, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1896, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

27 70th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 76, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1897, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from

October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

71st. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 77, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1897, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

72nd. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 78, and being in the words and figures of the writing-obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1897, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bonds for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

28 73rd. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 79, and being in the words and figures of the writing-obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1897, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said

bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

74th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 80, and being in the words and figures of the writing-obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1897, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

75th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 81, and being in the words and figures of the writing-obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1897, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still re-

mains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

29 76th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 82, and being in the words and figures of the writing-obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1897, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

77th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 83, and being in the words and figures of the writing-obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1897, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond, and the coupons thereto annexed, were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid; and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

78th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 84, and being in the words and figures of the writing-obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1897, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of

the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds, and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

79th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 85, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1897, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond, and the coupons thereto annexed, were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

80th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 86, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1897, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond, and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid; and there is now justly due this plaintiff, as inter-

est on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

81st. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 87, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1897, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

31 82nd. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 88, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1897, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

83rd. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 89, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1897, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer

of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

84th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 90, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1897, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

32 85th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 91, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April in the year 1898, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively became due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond the sum of $96.10, with interest on $26.10 thereof

from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

86th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 92, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April in the year 1898, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

87th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 93, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April in the year 1898, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

33 88th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 94, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1898, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on

the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

89th. And for a further and separate cause of action, this plaintiff says, that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 95, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1898, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

90th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 96, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1898, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

34 91st. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 97, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1898, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

92nd. And for a further and separate cause of action, this plaintiff says, that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 98, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1898, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

93rd. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 99, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1898, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

35 94th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 100, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1898, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

95th. And for a further and separate cause of action, this plaintiff says, that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 101, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1898, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

96th. And for a further and separate cause of action, this plaintiff says

that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 102, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year, 1898, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bonds and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

36 97th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 103, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1898, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

98th. And for a further and separate cause of action, this plaintiff says, that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 104, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1898, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bond and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

99th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 105, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1898, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says, that the said bonds and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

37 100th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 106, and being in the words and figures of the writing-obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1899, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty five dollars, interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

101st. And for a further and separate cause of action this plaintiff

says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing-obligatory, signed and executed as aforesaid, numbered 107, and being in the words and figures of the writing-obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1899, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

102nd. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 108, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1899, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

38 103rd. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 109, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1899, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

104th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 110, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1899, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

105th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 111, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1899, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bonds still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

39 106th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town

of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 112, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1899, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond, and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

107th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 113, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1899, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond, and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

108th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 114, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1899, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds, and the coupons thereto annexed, were, for a valuable consideration, transferred to this

plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

109th. And, for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 115, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1899, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond, and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

110th. And, for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 116, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1899, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond, and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

111th. And, for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, num-

bered 117, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1899, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds, and the coupons thereto annexed, were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872, and on $35 thereof from April 1, 1873, and on $35 thereof from October 1, 1873.

41 112th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 118, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1899, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons at the times the same respectively came due were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

113th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 119, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1899, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupon thereto annexed were, for a valuable consideration, transferred to thi plaintiff, and he is the holder and owner thereof; that the said coupon

at the times the same respectively came due were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

114th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 120, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1899, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons at the times the same respectively came due were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

42 115th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 121, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1900, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons at the times the same respectively came due were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

116th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid,

numbered 122, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1900, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons at the times the same respectively came due were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

117th. And for a further and separate cause of action this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 123, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1900, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars, interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons at the times the same respectively came due were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

43 118th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 124, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1900, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed, were for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons

at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

119th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 125, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1900, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

120th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 126, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1900, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

44 121st. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 127, and being in the words and figures of the

writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1900, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

122nd. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 128, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1900, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank, in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

123rd. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 129, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1900, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at

the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

45 124th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 130, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1900, annexed to which were three several coupons signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond, and the coupons thereto annexed, were for a valuable consideration transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

125th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 131, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April in the year 1900, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bonds for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons at the times the same respectively came due were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

126th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 132, and being in the words and figures of the writing obligatory

hereinbefore set forth, except the same was made payable on the first day of April, in the year 1900, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

46 127th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 133, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1900, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

128th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 134, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1900, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bond and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the

place where the same were made payable and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

129th. And for a further and separate cause of action, this plaintiff says that on or about the said 17th day of May, 1872, the said Town of Lyons, under and by virtue of the act aforesaid, duly issued its certain other bond or writing obligatory, signed and executed as aforesaid, numbered 135, and being in the words and figures of the writing obligatory hereinbefore set forth, except the same was made payable on the first day of April, in the year 1900, annexed to which were three several coupons, signed by the said commissioners, each for the payment to the bearer of the sum of thirty-five dollars interest on said bond for six months, at the Central National Bank in the city of New York, on the first day of October, 1872, and on the first days of April and October, respectively, 1873, as by such coupons will more fully appear.

And this plaintiff further says that the said bonds and the coupons thereto annexed were, for a valuable consideration, transferred to this plaintiff, and he is the holder and owner thereof; that the said coupons, at the times the same respectively came due, were duly presented at the place where the same were made payable, and payment thereof demanded, which was refused, and the said interest on said bond still remains wholly unpaid, and there is now justly due this plaintiff, as interest on said bond, the sum of $96.10, with interest on $26.10 thereof from October 1, 1872; and on $35 thereof from April 1, 1873; and on $35 thereof from October 1, 1873.

47 Wherefore the plaintiff demands judgment against the defendants for the sum of $12,396.90, with interest on $3,366.90 thereof from the 1st day of October, 1872, and on $4,515 thereof from the 1st day of April, 1873, and on $4,515 thereof from October 1st, 1873, besides the costs of this action.

J. B. PERKINS,
Pl'ff's Att'y.

NORTH. DIST. OF N. Y.,
Monroe County, ss:

I, James Breck Perkins, being sworn, say that I am the plaintiff's attorney in the above action; that the same is true of my own knowledge, except as to the matters therein stated on information and belief, and as to those matters I believe it to be true; that this action is brought on written instruments for the payment of money only, and that said instruments are now in my possession; that the grounds of my belief are such instruments in my possession; that the reason why the above complaint is not verified by the plaintiff is that he is not now in the State of New York, as I believe.

J. B. PERKINS.

Sworn to before me Feb'y 28th, 1874.

JNO. S. MORGAN,
Notary Public.

48 (Indorsed:) U. S. circuit court, northern district of New York. Edgar Munson vs. The Town of Lyons. Copy summons & complaint. J. B. Perkins, solicitor for pl'ff, Rochester, N. Y. Filed March 3, 1874.

49 United States circuit court, northern district of New York.

EDGAR MUNSON
vs.
THE TOWN OF LYONS.

The Town of Lyons, defendant in this action, by Comstock & Bennett, its attorneys, for first defence and answer to the plaintiff's complaint herein, denies each and every allegation and statement contained in said complaint, and in each and every separate statements of causes of action contained in said complaint, except that the defendant admits the allegation that the plaintiff is a citizen of the State of Pennsylvania, and not a citizen of the State of New York, and also admits that the defendant is a municipal corporation organized under and by virtue of the laws of the State of New York, and is a citizen of said State, and a resident of said northern district of said State.

Second defense:

For further answer and defense the said defendant alleges that the said alleged judgment and determination of the county judge of Wayne County, referred to in said complaint, and in the bonds therein
50 set out, is void for the reason that it is based upon an illegal, insufficient, and void petition, which is annexed to and forms a part of the record of said judgment; that prior to the rendition of said judgment, and on the 6th day of February, 1871, thirty-one several petitions, all being alike, and in the same words and figures, except the signatures subscribed thereto, and each having some signatures subscribed to the same, and all being annexed together and together forming one petition, were presented to the county judge of Wayne County in which said town of Lyons is situated, and the defendant alleges that each and every of said petitions is in the words and figures following, excepting and omitting the signatures subscribed thereto, to wit:

To the honorable the county judge of the county of Wayne:

The petition of the subscribers hereto respectfully represents that they are a majority of the tax-payers of the town of Lyons, in said county, whose names appear upon the last preceding tax-list or assessment roll of said town, as owning or representing a majority of the taxable property in the corporate limits of such town; that they are
51 such a majority of tax-payers, & represent such a majority of taxable property; that they desire that such town shall create and issue its bonds to the amount of one hundred and fifty thousand dollars (which does not exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll), and invest the same or the proceeds thereof in the stock of the Sodus Bay, Corning and New York Railroad Company, which is a railroad company in the State of New York, provided that the terminus of said road is made at Nicholas Point on said bay in the town of Huron. It is understood that the stock so to be taken is to embrace and include the stock now already subscribed and taken by persons residing in the said town of Lyons, amounting to the sum of sixteen thousand and four hundred dollars.

And your petitioners pray that such proceedings may be had for that purpose as are authorized and provided by the statutes of the State of New York in such case made and provided.

Dated , 1870.

Names. Residences.

52 And the defendant alleges that no other or different petition or application in writing expressing a desire that said town of Lyons should create and issue its bonds to the amount of one hundred and fifty thousand dollars, or any other sum, and invest the same or the proceeds thereof in the stock or bonds of the Sodus Bay, Corning and New York Railroad Company, was ever presented to the said county judge of Wayne County prior to the making and rendering of the said judgment or adjudication of the said county judge, and that said judgment was based wholly upon said petition or petitions, a copy of which is above set forth, except the names of the subscribers thereto, and not upon any other or different petition or application in writing of any of the tax-payers of said town.

And the said defendant alleges that the said petition is unauthorized, illegal, and void, and the said county judge had no jurisdiction to entertain the same, or any proceedings thereupon, or to render any judgment in such proceedings for the following reasons, to wit:

First. That said petition contains a condition in the words fol-
53 lowing, viz: "Provided, That the terminus of said road is made at Nicholas Point on said bay, in the town of Huron," which condition was unauthorized by the statute in such case made and provided at the time when said petition was presented to, and acted upon, by said county judge.

Second. Said petition also contains another condition or qualifying clause in the words following, viz: "It is understood that the stock so to be taken (meaning the stock of said railroad company in which the bonds of said town, or the proceeds thereof, were desired to be invested) is to embrace and include the stock now already subscribed and taken by persons residing in the said town of Lyons, amounting to the sum of sixteen thousand and four hundred dollars," which condition or qualifying clause was and is wholly unauthorized and illegal. And the defendant further alleges that by reason of the insufficiency and illegality of said petition, and for want of a petition drawn in conformity with chapter 907 of the laws of the State of New York, of 1869, and the acts amendatory thereof, the said county judge of Wayne
54 County had no jurisdiction or authority to render the said judgment and determination mentioned in said bonds, nor to appoint the said David F. Cole, William D. Perrine, and Dwight S. Chamberlain as commissioners for said town of Lyons, for the purpose set forth in the statutes above referred to, and that said judgment and determination of said county judge and the appointment of said commissioners are illegal, null, and void, and appear to be so on the face of the record thereof, said petition being a part of such record; and the said David F. Cole, William D. Perrin, and Dwight S. Chamberlain had no authority, as commissioners or otherwise, to make, sign, or issue said bonds or any bonds of the said town of Lyons, and that the said bonds are null and void.

And the defendant denies that the plaintiff is a bona-fide holder of the said bonds, set out in said complaint, or of any of them, or of any of the coupons annexed thereto, or detached therefrom, and in this behalf the defendant alleges upon information and belief that the said
55 plaintiff, at the time he obtained said bonds and coupons, was the president and one of the directors of the railroad company named in said complaint, and had been such president and director for a long time prior thereto; that he paid no consideration therefor, but received the same after the coupons upon which he seeks to recover in this action were past due, and is prosecuting this action for the benefit

of said railroad company, and that he received the same after he had been notified or informed of the facts and circumstances which render the said bonds void, and with knowledge that said bonds had been illegally issued.

COMSTOCK & BENNETT,
Defendant's Attorneys.

56 STATE OF NEW YORK,
Ontario County, ss:

I, Harlow L. Comstock, of Canandaigua, in said county, being duly sworn, say, that I am one of the attorneys for the defendant in the above entitled action; that the defendant's attorneys both reside in the village of Canandaigua, in the county of Ontario; that the defendant is a municipal corporation, being one of the towns of the county of Wayne, in this State; that no one of its officers is a resident of said county of Ontario, where the defendant's attorneys reside; that said officers of the said defendant are all now absent from the said county of Ontario, as this deponent verily believes, and therefore this verification is made by this deponent; that the foregoing answer is true to my own knowledge, except as to the matters therein stated on information and belief, and as to those matters, I believe it to be true; that the grounds of my knowledge and belief are that I have had a personal inspection
57 of all the proceedings before the county judge of Wayne County referred to in the complaint and answer in this action, of the petition of the tax-payers, and of the judgment alleged to have been rendered by said county judge, and based upon said petition, and the alleged appointment of the commissioners of said town and all the proceedings in relation to the alleged bonding of said town, on file or recorded in the office of the clerk of the said county of Wayne, and have made a thorough and careful examination of the same; that I have long been counsel for the said town in other legal proceedings in relation to said records and proceedings relating to the bonding of said town, and have become thoroughly acquainted with the same, that the said petition of the said tax-payers on which said judgment is formed is not drawn in conformity with the statute referred to in said complaint, and contains provisions and conditions wholly illegal, unauthorized and void; and I verily believe that the whole of said proceedings are void, and that the said commissioners were not lawfully appointed, and had no authority to issue any bonds or in any manner to do any act
58, 59 for or on behalf of said town of Lyons; and as to the other facts involved in this action, I derive my information from the defendant's officers and a letter which I have seen, written by the plaintiff as the president of the railroad company named in said complaint, and I verily believe the whole of said answer to be true.

H. L. COMSTOCK.

Sworn to before me this 16th day of May, 1874.

D. HERRON, J'R,
Notary Public in & for Ont. Co.

60 (Indorsed:) U. S. circuit court, northern district of New York. Edgar Munson vs. The Town of Lyons. Amended answer. Comstock & Bennett, defendant's attorneys. Filed May 19, 1874.

61 At an adjourned term of the circuit court of the United States of America for the northern district of New York, in the second circuit, held at the city hall in the city of Utica on Tuesday, the 16th

day of March, in the year of our Lord one thousand eight hundred and seventy-five.

2½ o'clock p. m. court met.

Present, the honorable William J. Wallace, judge, W. F. Cogswell, H. L. Comstock.

EDGAR MUNSON
vs.
THE TOWN OF LYONS.

On motion of W. F. Cogswell, counsel for plaintiff, ordered that a jury be empannelled, and that the trial of this case do now proceed.

Whereupon the following-named jurors were called and sworn, viz: Cyrus H. Tyler, G. W. Pelton, N. W. Foster, William Hamilton, Joseph Schwartz, J. W. Rathbone, William Scoville, Eli Avery, Nathan O. Phelps, Asahel J. Carmichael, William Walbrand, Thomas James.

M'r Cogswell opens case for plaintiff.

Plaintiff's witnesses sworn—Alfred H. Gates, David F. Cole.

Court adjourned to 10 o'clock a. m. to-morrow.

WEDNESDAY, *March* 17, 1875—10 o'clock a. m.

Court met. Present, Hon. William J. Wallace, judge.

62 EDGAR MUNSON
vs.
THE TOWN OF LYONS.

Counsel for the respective parties consent to proceed with trial with eleven jurors, and J. W. Rathbone, a juror in this case, is excused.

Trial continued.

Plaintiff's witnesses sworn. David F. Cole recalled; Edgar Munson.

Pl'ff rests.

M'r Comstock opens case for defendant.

Defendant's witness sworn—Edgar Munson.

Def't rests.

Court directs a verdict for plaintiff.

The jury here, under direction of the court, without retireing, answer and say they find a verdict for the plaintiff for $14,042.94; and further say they assess the damages of the plaintiff on the whole coupons set forth in the complaint, $14,042.94, and also find the amount of such coupons first falling due, with interest, to be $3,973.20.

Ordered, verdict taken subject to the opinion of the court.

63, 64 At a stated term of the circuit court of the United States of America for the northern district of New York, in the second circuit, held at the court-house in the village of Canandaigua on Tuesday, the 15th day of June, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable William J. Wallace, judge.

EDGAR MUNSON
vs.
THE TOWN OF LYONS.

This case having been tried at the March adjourned term of this court, and the court having ordered a verdict for the plaintiff for fourteen

thousand forty-two dollars and ninety-four cents and reserved the case for further consideration, and the plaintiff having moved for judgment upon the said verdict, after hearing argument of counsel for the respective parties, and due consideration thereof by the court, ordered judg, ment for the plaintiff on the verdict.

65, 66 At a stated term of the circuit court of the United States of America for the northern district of New York, in the second circuit, held at the court-house in the village of Canandaigua on Tuesday, the 15th day of June, in the year of our Lord one thousand eight hundred and seventy-five.

Present, the honorable William J. Wallace, judge.

EDGAR MUNSON
vs.
THE TOWN OF LYONS.

On motion of counsel for defendant, ordered that the defendant have sixty days to make and serve bill of exceptions, and that the plaintiff have the like time to prepare and serve amendments thereto, and that in the mean time all other proceedings be stayed.

67 *Statement of judgment.*

United States circuit court, northern district of New York.

EDGAR MUNSON
vs.
THE TOWN OF LYONS.

This case having come on for trial at the March adjourned term of this court, held at the city hall in the city of Utica, on the 16th & 17th days of March, 1875, and the court having directed a verdict for the plaintiff for the sum of fourteen thousand and forty-two dollars and ninety-four cents and reserved the case for further consideration; and the court having ordered judgment for the plaintiff on the verdict at the June term of said court held at the village of Canandaigua on the 15th day of June, 1875, and at said June term having ordered a stay of proceedings herein for a bill of exceptions, and a bill of exceptions having been filed: Therefore it is considered that the said plaintiff, Edgar Munson, do recover of the said defendant, The Town of Lyons, the sum of fourteen thousand and forty-two dollars and ninety-four cents,
68, 69 and interest thereon from the 17th day of March, 1875, amounting to five hundred and fifty-seven dollars and two cents, and also the sum of one hundred and fifty-two dollars and twenty-five cents for his costs and disburs'ments in this suit as taxed, amounting in the aggregate to the sum of fourteen thousand seven hundred and fifty-two dollars and twenty-one cents.

And the said defendant in mercy, &c.

Judgment signed this 11th day of October, A. D. 1875.

CHARLES MASON, *Clerk.*

70 (Indorsed:) U. S. circuit court, north. dist. of N. Y. Edgar Munson vs. The Town of Lyons. Judgment record. J. B. Perkins, pl'ff's att'y. Debt, $14,042.94; int., 557.02; costs, 152.25—$14,752.21. Filed October 11, 1875, 12 o'clock m.

71 *Bill of exceptions on behalf of defendant.*

Circuit court of the United States, second circuit, northern district of New York.

EDGAR MUNSON
vs.
THE TOWN OF LYONS.

Afterwards, to wit, at a circuit court held at the United States circuit court room in the city of Utica, in and for the northern district of New York, in the State of New York, on the sixteenth day of March, one thousand eight hundred and seventy-five, by and before the Hon. William J. Wallace, district judge of said district holding said circuit court, came the parties aforesaid, by their attorneys aforesaid, and also by their respective counsel, and the issues thus joined came on to be tried by and before said judge and a jury; and the said plaintiff, in order to maintain the issues on his part, called one Alfred H. Gates as a witness for said plaintiff, who, being duly sworn, testified as follows:

I am the county clerk of the county of Wayne, State of New York. I have with me from the files of the clerk's office of said county the judgment-roll or judgment in a proceeding to bond said Town of Lyons, in a proceeding by and before the county judge of said county of
72 Wayne. The judgment-roll was filed and judgment entered on the seventeenth day of May, 1872. (The witness here produced said judgment roll, which consists of the following documents annexed together and constituting said judgment-roll, to wit: thirty-one several petitions, all being alike and in the same words and figures, except the signatures subscribed thereto, and each having some signatures subscribed to the same, and all being annexed together, each and every of which petitions is in the words and figures following, excepting and omitting the signatures subscribed thereto, to wit:

"To the county judge of the county of Wayne:

"The petition of the subscribers hereto respectfully represents that they are a majority of the tax-payers of the town of Lyons, in said county, whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the corporate limits of such town; that they are such a majority of tax-payers, and represent such a majority of taxable property; that they desire that such town shall create and issue its bonds to the amount of one hundred and fifty thousand dollars, which does not exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll, and invest the same, or the proceeds thereof, in the stock of the Sodus Bay, Corning and New York Railroad Company, which is a railroad company in the State of New York; provided that the terminus of said road is made at Nicho-
73 las Point, on Sodus Bay, in the town of Huron.

"It is understood that the stock so to be taken is to embrace and include the stock now already subscribed and taken by persons residing in said town of Lyons, amounting to the sum of sixteen thousand and four hundred dollars.

"And your petitioners pray that such proceedings may be had for that

purpose as are authorized and prescribed by the statutes of the State of New York, in such case made and provided.

"Dated , 1870."

Names.	Residences.

Annexed to said petitions is an affidavit in the words and figures following, to wit:

STATE OF NEW YORK,
County of Wayne, ss:

De Witt Parshall, of the town of Lyons, in the county of Wayne and State of New York, being duly sworn, says that he is a resident and tax-payer of the said town of Lyons, in said county of Wayne, and signed his name to the foregoing and annexed petition, as such tax-payer; that he is personally acquainted with most of the persons whose names are subscribed to said petition, and believes their several signatures thereto to be genuine; that he has examined the last tax-list or assessment-roll of the said town of Lyons and compared the sev-
74 eral names subscribed to said petition therewith; that the said persons whose names are subscribed to said petition constitute and are a majority of all the tax-payers whose names appear upon the said tax-list or assessment-roll; and that such persons whose names appear thus upon said petition own or represent a majority of all the taxable property within the corporate limits of said town of Lyons, as appears by said tax-list or assessment-roll.

Deponent further says that said petitioners desire that said town of Lyons shall create and issue its bonds to the amount of one hundred and fifty thousand dollars, the amount named in said petition; and which does not exceed twenty per cent. of the whole amount of taxable property within the corporate limits of said town, as shown by said tax-list and assessment-roll, and invest the same, or the proceeds of the same, in the stock or bonds of "the Sodus Bay, Corning and New York Railroad Company," named in said petition.

D. W. PARSHALL.

Subscribed and sworn to before me this 6th day of February, 1871.

L. M. NORTON,
Wayne Co. Judge.

Annexed to said petition and affidavit is a notice in the words and figures following, to wit:

STATE OF NEW YORK,
County of Wayne, ss:

To whom it may concern:

75 In the matter of the petition of certain tax-payers of the town of Lyons, in said county, that said town create and issue its bonds to the amount of one hundred and fifty thousand dollars, and invest the same, or the proceeds thereof, in the stock of the Sodus Bay, Corning and New York Railroad Company, pursuant to an act of the legislature of the State of New York entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April 20, 1850, so as to permit municipal corporations to aid in the construction of railroads," passed May 18th, 1869.

Application having been made to me, Luther M. Norton, judge of the

county of Wayne, by petition, purporting to be signed by a majority of the tax-payers of the town of Lyons, in said county, whose names appear on the last preceding tax-list and assessment-roll of said town as owning or representing a majority of the taxable property in the corporate limits of said town, which petition is duly verified, and sets forth that said petitioners are desirous that said town should create and issue its bonds to the amount of one hundred and fifty thousand dollars, and invest the same, or the proceeds of the same, in the stock of the Sodus Bay, Corning and New York Railroad Company, pursuant to the provisions of an act of the legislature of the State of New York entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April 2, 1850, so as to permit municipal corporations to aid in the construction of railroads," passed May 18, 1869.

76 Now, therefore, in pursuance of an order this day made by me, as county judge of said county, in the above-entitled matter, notice is hereby given that I, Luther M. Norton, as county judge of said county, shall on the 23d day of February, 1874, at 10 o'clock in the forenoon, at the surrogate's office, in the village of Lyons, in said county, proceed to take proof of the facts set forth in said petition in respect to the number of tax-payers signing said petition, and as to the amount of taxable property owned or represented by said petitioners.

Dated February 6th, 1871.

L. M. NORTON,
Wayne Co. Judge.

The order referred to in the aforesaid notice and which is also a part of said judgment-roll, is in the words and figures following, to wit:

STATE OF NEW YORK,
County of Wayne, ss:

In the matter of the petition of certain tax-payers of the town of Lyons, in said county, that said town create and issue its bonds to the amount of one hundred and fifty thousand dollars, and invest the same, or the proceeds thereof, in the stock of the Sodus Bay, Corning and New York Railroad Company, pursuant to an act of the legislature of the State of New York, entitled "An act to amend an act entitled 'An act to authorize the formation of railroad corporations, and to regulate the same,' passed April 2, 1850, so as to permit municipal corpora-

77 tions to aid in the construction of railroads," passed May 18, 1869.

A petition duly verified by one of the petitioners, and setting forth that the subscribers thereto are a majority of the tax-payers of the town of Lyons, in the said county, whose names appear upon the last preceding tax-list or assessment-roll of said town, as owning or representing a majority of the taxable property in the corporate limits of said town; that the subscribers thereto are a majority of the tax-payers of the town of Lyons, in said county, whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the corporate limits of said town; that they own or represent a majority of such taxable property; and that they desire that said town shall create and issue its bonds to the amount of one hundred and fifty thousand dollars, and invest the same, or the proceeds of the same, in the stock of the Sodus Bay, Corning and New York Railroad Company, which is a railroad company duly incor-

porated under the laws thereof, having been duly presented to me this day, and filed, and the said petitioners having thereupon duly made application to me, pursuant to said act, for the order therein authorized:

Now, therefore, I, Luther M. Norton, county judge of said county of Wayne, do hereby order that the notice hereto annexed and signed by me be forthwith published in the newspapers published in said county, known as the Lyons Republican, to the end, that at the time and
78 place mentioned in said notice, such further proceedings may then and there be had as are required and authorized by said act.

In witness whereof I have hereunto set my hand at the court-house, in the village of Lyons, in said county, this 6th day of February, 1871.

L. M. NORTON,
Wayne Co. Judge.

Annexed to said order is an affidavit in the words and figures following, to wit:

STATE OF NEW YORK,
County of Wayne, ss:

William T. Tinsley, being duly sworn, says he is the publisher of the Lyons Republican, a public newspaper published in the village of Lyons, in said county; that a notice, of which the annexed is a printed copy, taken from said paper, has been published therein once a week for three successive weeks, commencing on the 9th day of February, 1871.

W. T. TINSLEY.

Subscribed and sworn before me this 23d day of February, 1871.

D. S. CHAMBERLAIN,
Notary Public in and for Wayne Co.

Annexed to said affidavit is a printed copy of the foregoing notice, dated February 6th, 1871, and signed L. M. Norton, Wayne Co. judge.

The judgment or adjudication of the said county judge annexed
79 to the said petitions, order, notice, and affidavits, and forming part of said judgment-roll, is in the words and figures following, to wit:

In the matter of the petition of certain tax-payers of the town of Lyons Wayne County, that said town create and issue its bonds to the amount of one hundred and fifty thousand dollars, and invest the same, or the proceeds of the same, in the stock of the Sodus Bay, Corning and New York Railroad Company, pursuant to an act of the legislature of the State of New York, entitled "An act to amend an act to authorize the formation of railroad corporations, and to regulate the same," passed April 20, 1856, so as to permit municipal corporations to aid in the construction of railroads, passed May 18, 1869, and the several acts amendatory thereof.

Before L. M. Norton, Wayne Co. judge.

Whereas on the 6th day of February, 1871, an application was made to the county judge of the county of Wayne, by certain tax-payers of the town of Lyons in said county, purporting to be a majority of the tax-payers of said town whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the corporate limits of such town, by peti-

tion verified by D. W. Parshall, one of the petitioners, setting forth
80 that they are a majority of the tax-payers of said town and represent a majority of the taxable property of said town, as appears from said last preceding tax-list or assessment-roll of said town, and that they desire that said town shall create and issue its bonds to the amount of one hundred and fifty thousand dollars, and invest the same, or the proceeds of the same in the stock of the Sodus Bay, Corning, and New York Railroad Company, said railroad company being a company in this State, and praying the said judge to take all and singular the proceedings requisite for that purpose, pursuant to the statutes in such case made and provided.

Whereupon the said county judge, on said 6th day of February, 1871, pursuant to the statute, duly made an order that notice should be forthwith published in the Lyons Republican, a newspaper published at Lyons, in the county of Wayne, "to whom it may concern," setting forth that on the 23d day of February, 1871, at 10 o'clock in the forenoon of that day, at the surrogate's office in the village of Lyons, in said county, the said county judge would proceed to take proof of the facts set forth in said petition as to the number of tax-payers joining in said petition, and as to the amount of taxable property represented by said petitioners.

And whereas on the 23d day of February, 1871, at ten o'clock in the forenoon of that day, proof having been duly made to the said county judge of the publication of said notice, pursuant to said order, the parties interested in said matter and proceedings appeared before said
81 county judge at the said surrogate's office aforesaid, W'm Clark, esq., G. H. Camp, esq., and T. W. Collins, esq., appearing as counsel for said petitioners, and in favor of said application, and J. Welling, esq., C. Mason, esq., and C. H. Roys, esq., appearing as counsel for those opposed to said application, and on that day, and the days to which said proceedings were duly adjourned, made proof before me of the facts set forth in said petition, as to the number of tax-payers joining in said petition, and as to the amount of taxable property owned or represented by them, as shown by the last preceding tax-list or assessment-roll of said town, and as to the whole number of tax-payers of said town, and of the whole amount of taxable property of said town, as shown by the last preceding tax-list or assessment-roll of said town, and of all the facts necessary to be taken into consideration relating thereto; and other tax-payers of said town then and there appeared before said county judge and expressed a desire to join as petitioner in said petition, and did so join as petitioners in said petition and in the said application to bond said town for the purposes aforesaid; and proof being taken as to the number of tax payers so joining in said petition and application with the other petitioners, and as to the amount of taxable property represented by them as appearing upon the said tax-list or assessment-roll, and after hearing the argument of the counsel aforesaid, it appearing satisfactorily to the said county judge that the said petitioners
82 whose names appear upon said tax-list or assessment-roll, and the other tax-payers aforesaid of said town, who did then and there, on such proceedings, appear before him and express a desire to join in such application aforesaid, and who did so join, and whose names also appeared upon said tax-list or assessment-roll, do represent a majority of the tax-payers of said town, as shown by the said last preceding tax-list or assessment-roll, said tax-list or assessment-roll being the tax-list or assessment-roll of the year 1870, and do own or represent a majority of the taxable property upon said list or roll, and that the said amount of bonds named in such petition does not exceed twenty per cent. of the

whole amount of taxable property, as shown by said tax-list or assessment-roll.

It is hereby adjudged and determined by the said county judge, and the said county judge doth hereby adjudge and determine, in pursuance of the statutes in such case made and provided, that said petitioners whose names appear upon said tax-list or assessment-roll, and who are assessed thereon, and the other tax-payers aforesaid of said town who did then and there, on such proceedings, appear before him and express a desire to join in said petition, and with the other petitioners in said application to bond said town, and who did so join, and whose names also appear upon said tax-list or assessment-roll as being
83 assessed thereon, do represent a majority of the tax-payers of said town, as shown by the said last preceding tax-list or assessment-roll, the same being the tax-list and assessment-roll of the year 1870, and do own or represent a majority of the taxable property, as shown by said last preceding tax-list or assessment roll, and the said county judge hereby orders and directs that this judgment and determination be duly entered for record with the clerk of the county of Wayne.

And I do further file the petition which is hereto annexed as a part of this record and judgment-roll, and I do further direct that notice of this final determination be published for three weeks, at least once in each week, in the same newspaper in which notice of such hearing was published, as aforesaid.

And I do hereby appoint and commission three persons, to wit, David F. Cole, William D. Perrine, and Dwight S. Chamberlain, who are freeholders, residents, and tax-payers within the corporate limits of the said town of Lyons, for the purpose named in the act entitled "An act to amend 'An act to authorize the formation of railroad corporations, and to regulate the same,' passed April 2, 1850, so as to permit municipal corporations to aid in the construction of railroads," passed May 18, 1869, and the several acts amending the same, and amendatory thereof, so far as the same relates to the matters hereinbefore referred to.

In witness whereof the said county judge hath hereunto set his hand this 17th day of May, 1872.

L. M. NORTIN,
Wayne Co. Judge.

84 And the counsel for said plaintiff then offered to read said judgment roll in evidence, to which the counsel for the said defendant objected, on the ground that the said petition of the tax-payers of the town of Lyons to the said county judge is not drawn in conformity with the statute authorizing proceedings for the bonding of municipal corporations, and therefore it did not confer jurisdiction upon said county judge to entertain such proceedings nor to render any judgment therein, for the following reasons:

First. The said petition contains a condition in these words: "Provided, That the terminus of said road is made at Nicholas Point, on Sodus Bay, in the town of Huron."

Second. The said petition contains another qualifying clause, in these words, to wit: "It is understood that the stock so to be taken is to embrace and include the stock now already subscribed and taken by persons residing in the said town of Lyons, amounting to the sum of sixteen thousand and four hundred dollars."

Third. The condition first above mentioned was unauthorized by the statute when the said petition was presented to and acted upon by said county judge, and it rendered said petition void.

Fourth. The qualifying clause secondly above referred to was unauthorized by the statute, and it rendered said petition illegal and void.

85 Fifth. By reason of each of these clauses in said petition, the said petition was insufficient to confer jurisdiction upon said county judge and said proceedings, and the said judgment is void.

His honor the judge overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there duly noted by the court.

The counsel for the defendant then and there objected to the reading of said judgment-roll, or judgment in evidence, on the ground that the said proceeding before the county judge of Wayne County to bond said town of Lyons, having been commenced under the general bonding act of 1869 (laws of 1869, chap. 907), and while it was in full force, and before the act of 1871 (laws of 1871, chap. 925), had become a law, and remaining unfinished when the act of May 12th, 1871, took effect, said proceeding could not be completed under either of said acts, but was completely arrested, because the said act of 1871 operated as a repeal of section one of said act of 1869, and because said act of 1871 had no retroactive effect to uphold proceedings instituted before it became a law, and because said petition was not drawn in conformity with said act of 1871.

His honor the judge overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and duly noted by the court.

86 The said judgment-roll, consisting of the documents hereinbefore set forth, was then read in evidence by the plaintiff's counsel.

The witness Alfred H. Gates further testified that he had with him the oath of office of the commissioners, and he produced the same, and the plaintiff's counsel read the same in evidence, which is in the words and figures following, to wit:

In the matter of the petition of certain tax-payers of the town of Lyons, Wayne County, that said town create and issue its bonds to the amount of $150,000, and invest the same, or the proceeds of the same, in the stock of the Sodus Bay, Corning and New York Railroad Company, pursuant to an act of the legislature of the State of New York, entitled "An act to amend an act entitled 'An act to authorize the formation of railroad companies and to regulate the same,' passed April 2d, 1850, so as to permit municipal corporations to aid in the construction of railroads," passed May 18, 1869, and the several acts amendatory thereof.

WAYNE COUNTY, *ss:*

We, David F. Cole, William D. Perrine, and Dwight S. Chamberlain, of Lyons, N. Y., commissioners of and for the town of Lyons, Wayne Co., N. Y., duly appointed by an order and judgment of the county judge of Wayne Co., duly made in the above-entitled matter on the 17th day of May, 1872, for the object and purpose mentioned in said order and judgment, being each for himself severally and duly sworn, do

87 each for themselves and himself solemnly swear that he will support the Constitution of the United States and the constitution of the State of New York, and that he will faithfully discharge all the

duties of the office of such commissioners, according to the best of his ability.

DAVID F. COLE.
W. D. PERRINE.
D. S. CHAMBERLAIN.

Sworn to before me this 17th day of May, 1872.

A. H. GATES,
Notary Public, Wayne Co., N. Y.

The counsel for the plaintiff then read in evidence a certified copy of the articles of association of the Sodus Bay, Corning and New York Railroad Company, by which it appeared that said articles of association were verified on the 11th day of June, 1870, and filed in the office of the secretary of state on the 17th day of June, 1870. The third article in said articles of association is in the words following, to wit:

"Third. The places from and to which said railroad is to be constructed, maintained, and operated, are as follows: Commencing at or near the village of Corning, on the New York and Erie Railway, in the county of Steuben and State of New York; thence by the most direct and feasible route, via Savona, Bradford, Penn Yan, Geneva, and Lyons, and to terminate on Great Sodus Bay, in the county of Wayne, in the State of New York."

The counsel for said plaintiff then offered to read in evidence
88 one hundred and twenty-nine bonds, each for the sum of one thousand dollars, and all being alike, except as to their number, time of payment, and the number of coupons attached thereto, and being the same one hundred and twenty-nine alleged bonds described in the plaintiff's complaint, one of which, No. 1, is in the words and figures following, to wit:

UNITED STATES OF AMERICA.

State of New York, county of Wayne.

TOWN OF LYONS.

No. 1] *Seven per cent. bond.* [$1,000.

Know all men by these presents that the Town of Lyons acknowledges itself indebted unto or bearer, in the sum of one thousand dollars lawful money of the United States, which sum it promises to pay at the Central National Bank of the city of New York, on the first day of April, in the year 1892, with interest from the 17th day of May, in the year 1872, at the rate of seven per cent., payable semi-annually on the first days of April and October, in each year, on the presentation and delivery of the proper interest-warrants.

This bond is one of a series of one hundred and fifty bonds, bearing even date herewith, for one thousand dollars each, numbered consecutively from one to one hundred and fifty, both inclusive, created and issued under the authority contained in chapter 907 of the laws of
89 1869, and the amendments thereto, and under and pursuant to a judgment and determination of the county judge of Wayne County, dated May 17th, 1872, duly rendered and entered of record under and pursuant to a petition of the tax-payers of said town, praying that said town issue its bonds to the amount of one hundred and fifty thousand dollars, and invest the same in the capital stock of the Sodus Bay, Cor-

ning and New York Railroad Company, a corporation duly created under the laws of this State, and under and pursuant to an appointment of said county judge, appointing and commissioning us, the undersigned, David F. Cole, W. D. Perrine, and Dwight S. Chamberlain, as commissioners of said town, for the purpose set forth in said acts of the legislature of this State.

In witness whereof we, the said commissioners, have hereunto set our hands and affixed our seals this 17th day of May, A. D. 1872.

DAVID F. COLE, [L. S.]
W. D. PERRINE, [L. S.]
DWIGHT S. CHAMBERLAIN, [L. S.]
Commissioners.

At the foot of each of said bonds is the following certificate, viz:

WAYNE COUNTY, *ss:*

Registered in the county clerk's office.

In witness whereof the clerk of Wayne County has hereto set his hand and affixed his seal of office.

[L. S.] ALFRED F. REDFIELD, *Clerk.*

90 The counsel for the defendant then and there duly objected to the reading of the several alleged bonds in evidence, on each of the following grounds, viz:

First. Because the said petition of the tax-payers of the town of Lyons to the county judge of Wayne County is void on its face, by reason of the qualifying clause contained therein in these words, to wit: "It is understood that the stock so to be taken is to embrace and include the stock not already subscribed and taken by persons residing in said town of Lyons, amounting to the sum of sixteen thousand and four hundred dollars."

Second. Because, by reason of said qualifying clause in said petition, and other defects therein, the said county judge had no jurisdiction to entertain said petition nor to render any judgment thereon.

Third. That said decision or judgment of said county judge is null and void.

His honor the judge overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there duly noted by the court.

The counsel for the defendant then and there also in due time objected to the reading of the said several alleged bonds in evidence, because the proceeding before the county judge of Wayne County to bond said town of Lyons having been commenced under the general bonding act of 1869, laws of 1869, chap. 907, and while it was in full force, and before the act of 1871, laws of 1871, chap. 925, took effect, it could
91 not be completed under either of said acts, because the said act of 1871 operated as a repeal of section one of said act of 1869, & because said act of 1871 had no retroactive effect to sustain proceedings commenced before it became a law, and because the petition of the tax-payers of said town did not comply with said act of 1871. His honor the judge overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there duly noted by the court.

The counsel for said defendant then and there also in due time objected to the reading of the said several alleged bonds in evidence, because the said judgment of the said county judge is void, and the said

pretended appointment of said commissioners is void, and they had no authority to issue said bonds. His honor the judge overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there duly noted by the court.

The counsel for the defendant then and there also objected to the reading of the said several bonds in evidence, on the ground that they were not issued in conformity with any statute then in force, or any lawful authority, because the interest is not made payable semi-annually, but is made payable on the first days of April and October in each year during the whole term of credit, but the bonds are dated on the 17th day of May, 1872, and the interest should have been
92 made payable on the 17th days of May and November in each year after their date, during the term of credit. His honor the judge overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there duly noted by the court.

The counsel for the defendant then and there also objected to the reading of the said several alleged bonds in evidence, because the tax-payers of the said Town of Lyons never consented to the bonding of said town in any such way; that the consent which they gave was to the bonding of the said town by bonds to be issued payable in thirty years, with interest payable semi-annually, whereas the bonds were issued payable in from twenty to thirty years, under another statute which was not in force when the tax-payers signed their assent. His honor the judge overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there duly noted by the court.

The counsel for the defendant then and there also objected to the reading of the said several alleged bonds in evidence, because the execution thereof had not been proved.

The counsel for the plaintiff then proved the signatures of the said David F. Cole, William D. Perrine, and Dwight S. Chamberlain to said bonds to be their genuine signatures, and also proved that
93 they did not sign the coupons annexed to said bonds, but that their names were lithographed to the same; and that said coupons were annexed to said bonds at the time of the execution thereof as aforesaid.

The said several objections to the reading of the said several bonds in evidence having been overruled, and exceptions taken as aforesaid, the counsel for the said plaintiff then produced the said several alleged bonds, and read the same in evidence.

The counsel for the plaintiff also proved the execution of the certificate at the foot of each of sa'd bonds, and read the same in evidence; which certificate is in the words following, to wit:

WAYNE COUNTY, *ss:*

Registered in the county clerk's office.

In witness whereof the clerk of Wayne County has hereto set his hand and affixed his official seal.

[L. S.] ALBERT F. REDFIELD, *Clerk.*

The counsel for the plaintiff then produced the book containing the subscription to the capital stock of the Sodus Bay, Corning and New York Railroad Company, and which subscription is in the words and figures following, to wit:

SODUS BAY, CORNING AND NEW YORK RAILROAD COMPANY.

Subscriptions to the capital stock.

The towns hereunder written, in pursuance of the authority vested in them by law and by the judgment and determination of the
94 county judge of the county in which said towns are respectively situated, duly rendered and entered of record by the commissioners duly appointed and qualified for that purpose, having severally subscribed, each town, the sum to be represented by shares of the par value of $100 each, set opposite the name thereof, to the capital stock of the Sodus Bay, Corning and New York Railroad Company, and in consideration of the benefits to result to such towns respectively from the construction of the road of said company in and through the same, and the certificates of stock to be issued to each of said towns, upon payment of the subscription therefor, do severally promise and agree to and with said company to deliver to said company, in payment of such subscription, the bonds of said town as authorized by law, in such amounts and at such time and times as the directors of said company shall call for the same.

In witness whereof the said towns, by their said commissioners, have caused their corporate names to be affixed hereto, and the amounts they are respectively authorized to subscribe to said stock to be placed opposite thereto.

In a column headed "name of town," was written "Town of Lyons;" in a column headed "amount," was written in figures, "$135,000," and in a column headed "signatures of town commissioners," were written the names of "David F. Cole, W. D. Perrine, D. S. Chamberlain."
95 It was proved that the names of said commissioners were signed by them respectively to said subscription; that said subscription was made on the 17th day of May, 1872. It was also proved, at the same time, to wit, on said 17th day of May, 1872, the said commissioners issued $135,000 of said bonds, and delivered the same to De Witt Parshall, one of the directors of said railroad company, under a written agreement between said commissioners and said railroad company, by D. W. Parshall, its agent, dated May 17th, 1872, and which is hereinafter set out.

It was also proved that at the time of the issuing of the one hundred and thirty-five thousand dollars of bonds aforesaid, the stock of the railroad company for that amount was issued to the said commissioners, and that the same was still held by them; the certificate of which stock was produced by one of the commissioners on his examination as a witness, and was in the words and figures following, to wit:

No. 6.] SODUS BAY & CORNING R. R. CO. [1,350 shares.

This is to certify that the Town of Lyons, Wayne County, is entitled to thirteen hundred and fifty shares, at $100 each, of the capital stock of the Sodus Bay & Corning R. R. Co., transferable only on the books of the company, in person, or by attorney, on the surrender of this certificate.

Corning, May 17th, 1872.

H. SHERWOOD, *President.*
FREDERICK W. PRINCE, *Secretary.*

96 Which certificate had upon it a twenty-five cent revenue stamp duly cancelled.

It was also proved that at a subsequent time the said commissioners made a similar subscription for an additional amount of stock, viz, $150,000, and issued bonds therefor under the same agreement, and received therefor the stock of the company to that amount, evidenced by a certificate in all respects the same as before, except the amount, which they still held.

The counsel for the plaintiff then offered to read in evidence three hundred and eighty-seven coupons which had been annexed to said bonds, but were then detached therefrom, being the same coupons described in said complaint, and being those falling due on the first day of October, 1872, and those falling due on the first days of April and October, 1873.

The counsel for the defendant then and there duly objected to the reading of the said several alleged coupons in evidence, on each of the following grounds, viz:

First. Because the said petition of the tax-payers of the town of Lyons to the county judge of Wayne Co. is void on its face, by reason of the qualifying clause contained therein in these words, to wit, "It is understood that the stock so to be taken is to embrace and include the stock now already subscribed and taken by persons residing in
97 said town of Lyons, amounting to the sum of sixteen thousand and four hundred dollars."

Second. Because by reason of said qualifying clause in said petition and other defects therein, the said county judge had no jurisdiction to entertain said petition, nor to render any judgment thereon.

Third. That said decision or judgment of said county judge is null and void.

His honor the judge overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there duly noted by the court.

The counsel for the defendant then and there, also in due time, objected to the reading of the said several alleged coupons in evidence, because the proceeding before the said county judge of Wayne County to bond said town of Lyons, having been commenced under the general bonding act of 1869, laws of 1869, chap. 907, and while it was in full force, and before the act of 1871, laws of 1871, chap. 925, took effect, it could not be completed under either of said acts, because the said act of 1871 operated as a repeal of section one of said act of 1869, and because said act of 1871 had no retroactive effect to sustain proceedings commenced before it became a law, and because the petition of the tax-payers of said town did not comply with said act of 1871.

98 His honor, the judge, overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there duly noted by the court.

The counsel for the said defendant then and there also, in due time, objected to the reading of the several alleged coupons in evidence, because the said judgment of the said county judge is void, and the said pretended appointment of said commissioners is void, and they had no authority to issue said bonds. His honor, the judge, overruled said objection, to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there duly noted by the court.

The counsel for the defendant then and there also objected to the reading of the said several alleged coupons in evidence, on the ground that

they were not issued in conformity with any statute then in force, or any lawful authority, because the interest is not made payable semi-annually, but is made payable on the first days of April and October in each year, during the whole term of credit, but the bonds are dated on the 17th day of May, 1872, and the interest should have been made payable on the 17th days of May and November in each year after their date, during the term of credit. His honor, the judge, overruled said objection, and to which ruling and decision the counsel for said defendant then
99 and there excepted, and the same was then and there duly noted by the court.

The counsel for the defendant then and there also objected to the reading of the said several alleged coupons in evidence, because the tax-payers of said town of Lyons never consented to the bonding of the said town in any such way; that the consent which they gave was to the bonding of the said town by bonds to be issued payable in thirty years, with interest payable semi-annually; whereas the bonds were issued payable in from twenty to thirty years, under another statute which was not in force when the tax-payers signed their assent. His honor the judge overruled said objection, and to which ruling and decision the counsel for the said defendant then and there excepted, and the same was then and there duly noted by the court.

The counsel for the defendant then and there also objected to the reading of the said several alleged coupons in evidence, because the execution thereof had not been proved. His honor the judge overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there duly noted by the court.

The counsel for the defendant then and there also objected to the reading of the said several alleged coupons, which first became due on each of said bonds, that is to say, those that fell due October first, 1872, in evidence, on the ground that each of them was made
100 for $35, which is a half year's interest upon one of said bonds, each bond being for $1,000, and each bond bearing date the 17th day of May, 1872, and each of said last-mentioned coupons being the amount of interest on said bonds for six months, being two months and fourteen days more than the time said coupons had to run, and the counsel for the defendant insisted that each of said last-mentioned coupons were excessive in amount and wholly unauthorized by the statute. His honor the judge overruled said objection, and to which ruling and decision the counsel for the defendant then and there excepted, and the same was then and there duly noted by the court.

The counsel for the plaintiff disclaimed the right to recover upon said last-mentioned coupons anything more than the interest upon said bonds from their date to the first day of October, 1872. His honor the judge then and there ruled and decided that the plaintiff had a right to recover upon said last-mentioned coupons the interest upon said bonds from their date to the time when they were made payable; to which ruling and decision the counsel for the defendant then and there excepted, and the same was then and there duly noted by the court.

The said several objections to the reading of the said several alleged coupons in evidence having been overruled, and exceptions having been taken as aforesaid, the counsel for the said plaintiff then produced
101 said several alleged coupons and read the same in evidence.

The said several coupons were all alike, except as to the time of their payment and the number of the bond from which it was detached. The following is a copy of one of them, viz:

On the first day of October, 1872, the town of Lyons, State of New York, will pay the bearer $35 at the Central National Bank in the city of New York, for six months' interest on bond No. 1 of said town for $1,000.

DAVID F. COLE,
W. D. PERRINE,
D. S. CHAMBERLAIN,
Commissioners.

The counsel for the plaintiff then called the said plaintiff Edgar Munson as a witness in his own behalf, who, being duly sworn, testified as follows:

"I am one of the directors of the Sodus Bay and Corning Railroad Company, and have been ever since its first organization. I have with me the book of records of the proceedings of said company. This is it." (The witness produced the record.)

The plaintiff's counsel then offered to read in evidence a resolution of the board of directors of the Sodus Bay, Corning and New York Railroad Company, passed at a meeting of said directors on the 11th day of November, 1870, which is in the words following, to wit:

"On motion of Mr Munson the following resolution was adopted:

102 "Resolved, That the terminus of the Sodus Bay, Corning and New York Railroad Company be, and the same hereby is fixed at Nicholas Point, on said Sodus Bay."

The counsel for the defendant then and there duly objected to the reading of said resolution in evidence on each of the following grounds, to wit:

First. That said evidence is wholly immaterial.

Second. That said resolution does not prove a location of the terminus of said railroad, because there could be no location of said railroad made by a mere resolution of the board of directors of said company; that in order to effect such location, said board of directors must cause to be made and filed in the office of the clerk of the county in which such railroad is to be located a map and profile of such railroad, determining and fixing the location of said railroad in said county.

His honor the judge overruled said objection, and to which ruling and decision the counsel for the said defendant then and there excepted, and the same was then and there duly noted by said court.

The plaintiff then proved that Nicholas Point mentioned in said resolution was in fact on Sodus Bay; and also proved the interest and principal of the said coupons, according to the ruling aforesaid, to be fourteen thousand forty-two dollars and ninety-four cents, including the amount claimed to be due on said coupons which fell due on the first day of October, 1872; of which sum three thousand nine hundred and

103 seventy-three dollars and twenty cents was the amount claimed to be due on account of said last-mentioned coupons.

The plaintiff here rested his case.

The defendant's counsel then produced and proved the execution and delivery of certain articles of agreement made by and between the said David F. Cole, William D. Perrine, and Dwight S. Chamberlain, commissioners of said town of Lyons, and the said Sodus Bay and Corning Railroad Company, by D. W. Parshall, its agent, on the 17th day of May, 1872; which said articles of agreement are in the words and figures following, to wit:

Articles of agreement, made this 17th day of May, 1872, between Da-

vid F. Cole, William D. Perrine, and Dwight S. Chamberlain, commissioners duly appointed by the county judge of the county of Wayne, for the purpose of creating and issuing the bonds of the town of Lyons, of said county, to the amount of one hundred and fifty thousand dollars, in aid of the Sodus Bay and Corning Railroad Company, under chapter 907 of the laws of 1869, as amended, parties of the first part, and the Sodus Bay and Corning Railroad Company, by D. W. Parshall, authorized agent, of the second part, witnesseth:

The party of the first part hereby agrees to execute and create the said bonds of the said town of Lyons to the amount of one hun-
104 dred and thirty-five thousand dollars, and deliver the same to the said De Witt Parshall, in trust, as hereinafter expressed, in exchange for an equal amount of stock of said company. Said bonds, or the proceeds of said bonds, to be expended in the construction of said railroad, on the following conditions and agreement:

Said company shall construct and complete its railroad through the village and town of Lyons to Nicholas Point, on Great Sodus Bay. Said bonds, or the proceeds of said bonds, shall be first used to buy the right of way and the necessary ground for the use of said railroad through the county of Wayne, for the purpose of grading the road-bed and preparing the same for the ties, including masonry and bridging, and in purchasing and laying down the ties ready for the iron through the county of Wayne.

Said Parshall is to hold said bonds, or the proceeds thereof, in trust, and shall pay over to said company said bonds, or the proceeds of said bonds, as fast as the above-mentioned work shall progress, and shall not be required to pay the same faster than the progress of said work will justify.

The parties of the second part hereby agree with the party of the first part that, in consideration of the delivery of the said one hundred and thirty-five thousand dollars bonds of the said town of Lyons to De Witt Parshall, trustee as aforesaid, they will issue one hundred and
105 thirty-five thousand dollars in the stock of the same railroad, and deliver the same to the party of the first part, and will construct and complete said railroad through the village and town of Lyons to Nicholas Point, on Great Sodus Bay, as soon and as fast as the same can reasonably be done; and the said bonds, or the proceeds of said bonds, shall first be expended as hereinbefore expressed; that said Parshall shall not be required to advance the same faster than the progress of the work will justify.

This contract is made and executed under and in accordance with chapter 507 of the laws of 1876.

In witness whereof the parties hereunto have affixed their hands the day and year above written.

DAVID F. COLE,
W. D. PERRINE,
D. S. CHAMBERLAIN,
Commissioners for the Town of Lyons.

SODUS BAY AND CORNING RAILROAD COMPANY,
By D. W. PARSHALL, *Agent.*

Authorized by resolution of board May 16, 1872.

The counsel for the said defendant then read said agreement in evidence.

The counsel for the said defendant then called the said plaintiff, Ed-

gar Munson, as a witness, who, having been duly sworn, testified as follows:

"I was present at a meeting of the directors of the Sodus Bay
106 and Corning Railroad Company on the 16th day of May, 1872, when a resolution was passed by the board of directors of said company, which I have before me in the book of minutes of said company."

The resolution referred to by the witness was then read in evidence by the defendant's counsel, which is in the words and figures following, to wit:

"On motion of M'r Munson, seconded by M'r Shepard,

"Resolved, That M'r Parshall be, and hereby is, authorized to enter into an agreement with the commissioners of the town of Lyons as to the terms upon which the bonds of said town shall be delivered to this company, and upon such terms as he shall deem right.

"All present voted in the affirmative."

The witness, Munson, further testified that the last above-mentioned resolution was passed on the 16th day of May, 1872.

The counsel for the said defendant then and there also read in evidence, from the said book of minutes of said Sodus Bay and Corning Railroad Company, another resolution, dated the 17th day of December, 1872, in the words and figures following, to wit:

"Resolved, That the agreement made by De Witt Parshall on behalf of this company on the 17th day of May, 1872, with the commissioners of the town of Lyons, for the issue of the bonds of that town, be approved and ratified. All present voting in the affirmative."

The witness, Edgar Munson, further testified as follows:

I think I was present at the meeting of the board of directors
107 of the Sodus Bay and Corning Railroad Company on the 17th day of December, 1872, when the resolution last read in evidence was passed. I think the contract referred to in said resolution was produced at that meeting.

I reside at Williamsport, in the State of Pennsylvania. I purchased the coupons, on which this action is brought, after they became due and payable, and in the month of January or February, 1874. I purchased them of M'r De Witt Parshall. I gave him my note for twelve thousand dollars for them. I think the note was made payable in one year from its date. I did not purchase the bonds, nor any of them, nor do I claim to own the bonds, nor any of the coupons, except those upon which this action is brought. The coupons which I purchased were detached from the bonds when I purchased them. M'r Parshall was then one of the directors of the Sodus Bay and Corning Railroad Company, and I was the president of said company, and have been ever since, and still am such president. I knew at the time I purchased these coupons that the coupons which fell due on the first day of October, 1872, were given for interest prior to the date of said bonds; that is to say, I knew that the bonds were dated subsequent to the first day of April, 1872, and I knew or supposed that I could only recover on said coupons the interest on said bonds from their date to the first day of October, 1872.

I knew, generally, that there was litigation about these bonds
108 when I purchased these coupons; and I also knew of the trust-agreement, which has been introduced in evidence, between the commissioners and the railroad company, by De Witt Parshall, agent. I purchased these coupons under these circumstances, because I considered them perfectly good, although I knew that the town was litigating about them. I took my chances on them. I cannot say that I knew at

that time that a bill in equity had been filed to compel the surrender and cancellation of the bonds. I know it now. I knew that the town had appeared by counsel before the board of supervisors to oppose the levying of a tax to pay the interest on the bonds, and generally that there was a litigation about the bonds.

His honor, the judge, then and there ruled and decided that the denial in the defendant's answer put in issue nothing but the formal execution of the bonds and the formal appointment of the commissioners. To which ruling and decision the counsel for the defendant then and there excepted, and the same was then and there duly noted by the court.

His honor, the judge, then and there also ruled and decided that the said defendant could not avail itself of any defense arising under the trust-agreement between the said commissioners and the said railroad company, dated May 17th, 1872. To which ruling and decision the counsel for the defendant then and there duly excepted, and the
109 same was then and there duly noted by the court.

The counsel for the defendant then and there requested the said court to rule and decide that upon the facts above proved, the plaintiff was not entitled to recover, and to direct a verdict for the defendant, but his honor, the judge, declined so to rule or decide, and declined so to direct a verdict for the defendant, but, on the contrary thereof, ruled and decided that, on the facts above proved, the plaintiff was entitled to recover, and to which ruling and decision the counsel for said defendant then and there duly excepted, and the same was then and there duly noted by the court.

His honor, the judge, then charged the jury that the plaintiff, on the above proofs, was entitled to recover of the defendant the sum of fourteen thousand forty-two dollars and ninety-four cents, and directed said jury to find that sum for the plaintiff, and to which charge and direction the counsel for the defendant then and there duly excepted, and the same was then and there duly noted by the court.

The jury then, under the direction of the court as aforesaid, and without retiring from said court, found their verdict for the plaintiff for the sum of fourteen thousand forty-two dollars and ninety-four cents.

And because none of the said exceptions, offers, requests, or
110, 111 decisions, so offered, made, and excepted to, as aforesaid, to the rulings, opinions, and decisions of the said judge do appear upon the record of the said trial; therefore, on the prayer of the said defendant, by his said counsel, his honor, the judge, hath to this bill of exceptions set his hand and seal according to the statute and the rules and practice of this court in such case made and provided, this seventeenth day of September, one thousand eight hundred and seventy-five.

WM J. WALLACE,
Judge.

COMSTOCK & BENNETT,
Defendant's Attorneys, Canandaigua, N. Y.
H. L. COMSTOCK,
Of Counsel.

112 (Indorsed:) Circuit court United States, north. dist. of New York. Edgar Munson vs. the Town of Lyons. Bill of exceptions. Comstock & Bennett, defendant's attorney. Filed Sept. 18, 1875.

113 United States circuit court, northern district of New York.

EDGAR MUNSON
vs.
THE TOWN OF LYONS.

This action was tried at the March term of this court, and on the trial the court ordered a verdict for the plaintiff for $14,042.41 and reserved the case for further consideration.

The plaintiff moved for judgment on the verdict, and the questions considered were presented upon requests on the part of the defendant, and exceptions taken upon the denial thereof.

W. F. Cogswell and S. C. Collins for the plaintiff, H. L. Comstock and C. H. Roys for the defendant.

WALLACE, J.:

This action is brought to recover the amount of certain coupons for payment of interest upon bonds issued in aid of the construction of the Sodus Bay, Corning and New York Railroad Company.

The bonds upon their face purport to have been created and issued by David F. Cole and two others, as commissioners in behalf of the town of Lyons, appointed for that purpose by the county judge of Wayne County, and to be part of a series authorized by the determination of such county judge, duly rendered and entered of record
114 pursuant to a petition of the tax-payers of the town and pursuant to chapter 907 of the laws of the State of New York, of 1869, and the amendments thereto.

By the act of 1869 referred to, whenever a majority of the tax-payers of any municipal corporation whose names appear upon the last preceding assessment roll of the corporation, as owning or representing a majority of the taxable property in the corporate limits of such corporation shall, by a petition verified, make application to the county judge of the county in which such corporation is situated, representing that such majority of tax-payers desire that the corporation shall create and issue its bonds to an amount specified, and invest them in the stock of a railroad company in the State, it shall be the duty of such county judge, after causing notice to be published, &c., to take proof as to the allegations in the petition, and if it appears satisfactorily to him that the petitioners do represent such majority, he shall so adjudge and determine and cause his determination to be entered of record, and such judgment and the record thereof shall have the same force and effect as other judgments and records in courts of record in the State; and if such county judge does so adjudge it shall be his duty forthwith to appoint and commission three persons, tax-payers and residents of the corporation, to be commissioners. And thereupon such commissioners
115 shall cause the bonds of such municipal corporation to be made and executed and attested by their individual seals, and are empowered to subscribe, in the name of the municipal corporation, for the stock of the railroad company, and pay for the same by exchanging therefor the bonds so executed by them.

On the 6th of February, 1871, a petition was presented, duly verified, to the county judge of Wayne County, representing that the subscribers constituted the requisite majority of tax-payers of the Town of Lyons, and desired that such town should create and issue its bonds to the amount of $150,000 and invest the same in the stock of the Sodus Bay,

Corning and New York Railroad Company, "provided that the terminus of said road be made at Nicholas Point, in the town of Huron," and praying that such proceeding be had for the purpose as are authorized by the statutes of the State in such case provided. The petition contained also this clause: "It is understood that the stock so to be taken is to embrace and include the stock now already subscribed and taken by persons residing in said Town of Lyons, amounting to the sum of $16400."

The county judge caused the requisite notice to be given, and proceeded to take proofs of the allegations in the petition, and during the progress of taking the proofs, and on May 12th, 1871, the legisla-
116 ture passed an act (chap. 925) to amend chapter 907 of the laws of 1869, by which certain sections of that act were changed in important particulars, while in other sections no changes were made.

None of the sections of the prior act were repealed in terms, but the sections referred to were modified by the words, "are amended to read as follows."

All proceedings after the amendatory act was passed were conducted pursuant to the requirements of that act, and on May 17th, 1872, the county judge adjudged that the allegations of the petition were proved, and appointed as commissioners the persons who executed the bonds, the coupons of which are those in suit.

The act of 1871 required that the petition should be filed by the county judge, as part of the judgment roll, and that his judgment be entered of record in the clerk's office of his county. It also made provision for a a review of the proceedings by certiorari, by which the appellate courts were authorized, "in appeals now pending, and in all future proceedings, to reverse, affirm, or modify the determination of the county judge or remand the proceedings back to be reheard by him, or direct that the proceeds de novo as if he had taken no action therein."

The statute under which the bonds were issued requires that they shall bear interest at the rate of seven per cent. per annum, pay-
117 able semi-annually, and bear interest warrants corresponding in number and amounts with the several payments of interest to become due. The bonds issued are dated May 17th, 1872, and were issued on that day.

The coupons are made payable on the first days of April and October in each year, and are for $35 each. At the time of issuing the bonds the commissioners subscribed for stock of the railroad company, and when they delivered the bonds, received in exchange certificates of stock.

The plaintiff purchased the coupons in suit after they became due.

It is insisted on behalf of the defendant that the bonds in question are void, because the county judge never acquired jurisdiction of the proceeding pursuant to which the commissioners were appointed, as the petition was not in conformity to the statute, in that it contained conditions which were unauthorized. Of these, one required the railroad company to locate the terminus of its road at a place named, and the other provided for the application of a portion of the bonds to be created to the purchase of stock then held by individuals resident in the town.

Decisions of the courts of the State of New York are cited, which hold that the petition in such proceeding must be an unconditional one, and that, if it contains conditions, the entire proceeding is void. The decision of the court of appeals in the case of The People vs. Adiron-
118 dac Company, countenances this position.

It is there said, in the opinion, "If the petition is in a form not warranted, or is subject to any condition not authorized by the statute, it is simply void, and the officer acquires no jurisdiction under it." It is not to be denied that this conclusion accords with the general doctrine that all proceedings which, like the one under consideration, may impose a charge upon the property of the citizen without his consent, must be strictly pursued. And it is also to be conceded that such conditions as were incorporated into the petition here are contrary to public policy, as they tend to subject measures which should be adopted solely from considerations of public welfare to the improper influences of personal or mercenary interests. Butternuts & Oxford Co. v. North (1 Hill, 618); Fort Edward Co. v. Payne (15 N. Y., 583). But the cases referred to arose upon a direct review of the proceeding, and although, in the exercise of a revisory or appellate jurisdiction, it might well be held that unauthorized or vicious conditions in the petition were fatal to the proceeding, it does not follow that the county judge had no right to entertain the proceeding, and that his action under it was so wholly nugatory that his judgment was nullity, and the bonds which were issued and negotiated void. It was not necessary so to decide; and such conclu-
119 sion would seem to be antagonistic to the theory and spirit of the legislation under which such bonds are issued, and of the particular statute under consideration.

If it is true that the county judge never acquired jurisdiction, because of the character of the petition, the bonds issued by the commissioners he appointed are invalid in the hands of innocent holders, because, in law, no commissioners were ever appointed, and no agents were ever empowered to represent the town. The Supreme Court of the United States has sustained, with steady hand, the rights of innocent holders of municipal bonds, which have been issued by agents in disregard of the limitations of their authority, but it has also recognized and enforced the distinction which exists between the want of power to act in behalf of the municipality, and irregularities in the exercise of a power that has been conferred. And if the bonds can be assailed collaterally, and defeated in the hands of innocent holders, whenever the officer upon whom jurisdiction is conferred to take cognizance of the proceeding errs in deciding that the proceeding is properly before him, this statute, and kindred legislation in many of the States of the Union, will prove highly discreditable because, as will be seen, it is calculated to invite investment in these bonds with entire confidence in their validity;
120 and this legislation will fail to meet the end for which it is designed, because the value of the bonds will be so precarious that ti will be difficult, if not impossible, to negotiate them advantageously.

The object of such legislation is to enable enterprises of public utility to be promoted, by obtaining the necessary means from municipal corporations interested in their success. As large sums are usually required, such legislation contemplates the creation of a class of obligations which will readily find their way to all the financial marts of the world, and will command the confidence of capitalists abroad and at home. As they are to be the obligations of municipalities of ample pecuniary ability to pay them, they will effectuate the end in view, if their validity is assured. To secure this, therefore, is a paramount consideration, for otherwise such legislation would be fruitless. Accordingly, by this legislation, these obligations are invested with ostensible indications of validity. They bear the attestation of public officers clothed by the legislature with apparent power to bind the municipalities of the State, whose malfeasance would cast dishonor not only upon the com-

munities which they immediately represent, but also upon the State at large; and they bear the guaranty of a judicial determination that they are created in conformity with law. In short, these obligations
121 are designed for negotiation, to a large extent, with those who are strangers to the merits of the particular enterprise for which they are created, and to the history of the particular proceedings under which they are issued, and who rely simply upon their value and their validity as obligations of municipalities of pecuniary ability, bearing the stamp of legislative sanction and official responsibility.

To imply the intent that such obligations, after they are negotiated, shall be vulnerable to objections of the character here urged, would be to impute bad faith to the authors of such legislation towards those who are to be induced to invest in such bonds.

The provisions of the statute in question, as well as considerations of general application to similar legislation, favor the conclusion that all errors in the proceeding pursuant to which the bonds are issued are to be corrected in the proceeding itself. This statute invests the county judge, a responsible judicial officer, with power to determine whether the requisite majority of the tax-payers of a municipality within his county desire that it shall issue its bonds in aid of a railroad. It affords opportunity for a full investigation by public notice to all who are concerned. It creates a proceeding capable of review by the highest tribunals of the State. It establishes ample safeguards for the protection of the tax-payers. These provisions invest the bonds when issued
122 with high assurances of their validity, and they indicate the intent that all errors in the proceeding shall be detected and defeated in the proceeding itself. It is, therefore, a reasonable construction of the statute to hold that when a petition is presented to the judicial officer who is invested with cognizance of the proceeding, which sufficiently conforms to the statute to call for the exercise of judicial judgment, it is delegated to him to determine whether or not it is sufficient, and, while any error on his part may be the subject of revision by the appellate courts, it cannot affect the validity of the bonds when raised collaterally. The injustice and inexpediency of permitting such defects as are here involved to invalidate the bonds when issued, has received legislative recognition by the amendments incorporated into the statute in 1871, after some of the State courts had held that the inserting of conditions in the petition was fatal to the proceeding, by which it is provided that the petition may be absolute or conditional, and that non-compliance with any condition in it shall not invalidate the bonds.

For these reasons a conclusion is reached adverse to the defendant on this branch of the case.

It is urged, as another objection to the validity of the bonds, that the proceedings under which they were issued became defunct because of the act of 1871. That act introduced important changes in the
123 legislation regulating the proceedings for bonding municipal corporations by amending various sections of the preceding act. It did not in terms repeal the former act, but by amending various sections substituted them in place of the former act.

It is contended for the defendant that although the proceedings taken for bonding prior to the act of 1871 were regular and complied with all the requirements then in force, and although those taken subsequent to the new act were in conformity with its requirements, nevertheless the former act, as to the sections modified, was repealed by implication, to

the same extent as though the sections had never existed and proceedings under them were deprived of all vitality.

This position cannot be sustained. While doubtless the legislature could have accomplished such a result, their intent to do so is not to be presumed, for no construction will be tolerated that will give a retrospective operation to a statute.

If the act of 1869 had been repealed by express terms, of course all proceedings taken under it would have been as nugatory as if the legislature had said that all proceedings pending should be arrested and annulled.

The subject of legislation was procedure, which was in every stage of progress at the time the amendments were passed. Many pro-
124 ceedings were pending at that time, doubtless, before county judges and in appellate courts; and that the legislature did not intend to suspend or annul such proceedings is evident from some of the provisions of the new act. It is there provided that in case of review in "appeals now pending, and in all future proceedings," the appellate court may reverse or modify the proceeding or remand it back to the county judge to be reheard and determined, and may direct that he proceed de novo as if he had taken no action. If it was intended to arrest and annul all proceedings which had not been terminated, why was the power conferred to permit the county judge to rehear the case under the original proceeding?

The effect of such amendments upon pending proceedings is very satisfactorily determined by the court of appeals of this State in considering a statute relating to procedure, which was amended in a manner similar to the act in question. The part which remains unchanged is to be considered as having continued the law from the time of its original enactment, and the new or changed portion to have become law only at and subsequent to the passage of the amendment. Judge Denio says, "The rule contended for would lead to the grossest absurdities. Pro-
ceedings which were quite regular when taken would be made
125 irregular or void by force of the subsequent statute, and confusion of every kind would be introduced." (Ely v. Holton, 15 N. Y., 595.)

These considerations dispose of the second objection to the plaintiff's recovery.

The other defences which have been urged may be disposed of briefly.

It is in proof that the defendant's bonds were delivered to the railroad company in exchange for stock for which the defendant had subscribed, and it does not appear that the defendant had ever offered to surrender the stock which it or its agents received. The defendant will not be heard to allege that it has not made its bonds or the interest coupons payable at the times directed by the statute, while it retains the stock it received in exchange for them. The doctrine of an equitable estoppel applies. (Sedgwick on Statutory and Constitutional Law, p. 90.)

It results that judgment must be entered for the plaintiff on the verdict.

126 (Indorsed:) U. S. circuit court, northern dist. of N. Y. Edgar Munson vs. The Town of Lyons. Opinion. Filed June 15th, 1875.

127 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the northern district of New York, in the second circuit, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court of the northern district of New York, before you, between Edgar Munson, plaintiff, and the Town of Lyons, in the county of Wayne and State of New York, defendant, a manifest error hath happened to the great damage of the said The Town of Lyons, as by its complaint appears, we being willing that the error should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same,

to the Supreme Court of the United States, together with this

128, 129 writ, so that you may have the same at Washington on the

second Monday of October, one thousand eight hundred and seventy-six, next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 10th day of December, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] CHARLES MASON,
Clerk of the Circuit Court for the Northern District of New York.

H. L. COMSTOCK,
Attorney for Plaintiff in Error.

Within writ allowed.
Dec. 10, 1875.

W'M J. WALLACE, *Judge.*

130 (Indorsed:) Supreme Court of the United States. The Town of Lyons, plaintiff in error, vs. Edgar Munson, defendant in error. Writ of error. H. L. Comstock, attorney for plaintiff in error. Filed Dec. 11, 1875.

131 Know all men by these presents that we, William Van Marter, George Ennis, Daniel V. Tellar, Charles Hazen, George Croul, Calvin C. Tindall, Joseph McCall, Murray J. Waterman, David McClelland, Oliver C. Sutton, John Bradley, William Bradley, Delos Dillingham, James B. Hartman, John H. Bourne, William Baltzel, George C. Sisson, Daniel B. Westfall, Joseph T. Degolier, Ira Mirick, Charles Bostwick, Newell T. Vanderbilt, George W. Jackson, Cyrus E. Jackson, & Thomas J. Agett, all of the town of Lyons, in the county of Wayne, and State of New York, are held and firmly bound unto Edgar Munson, of the city of Williamsport, in the State of Pennsylvania, in the sum of thirty thousand dollars, to be paid to the said Edgar Munson, his executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated this 10th day of December, 1875.

Whereas the above named, The Town of Lyons, is about to
132 prosecute a writ of error from the Supreme Court of the United States, to reverse the judgment of the circuit court of the United States for the northern district of New York, in the second circuit, in a certain action in which the said Edgar Munson was plaintiff and the said The Town of Lyons (in the county of Wayne, in the State of New York) was defendant, and in which said action a judgment has been rendered in said circuit court in favor of said Edgar Munson and against the said The Town of Lyons for the sum of fourteen thousand seven hundred and fifty-two dollars and twenty-one cents, damages, interest, and costs, and the record thereof filed with the clerk of the said circuit court, at his office in the city of Utica, on the 11th day of October, eighteen hundred and seventy-five:

Now, therefore, the condition of this obligation is such, that if the above named The Town of Lyons shall prosecute its said writ of error to effect, and answer all costs and damages, including the whole
133 amount of the judgment, just damages for delay, and costs and interest on the writ of error, if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Chas. Bostwick.	[L. S.]	M. J. Waterman.	[L. S.]
Newell T. Vanderbilt.	[L. S.]	David McCleland.	[L. S.]
Geo. W. Jackson.	[L. S.]	O. C. Sutton.	[L. S.]
Cyrus E. Jackson.	[L. S.]	John Bradley.	[L. S.]
Thomas J. Agett.	[L. S.]	W'm Bradley.	[L. S.]
Jefferson Sparks.	[L. S.]	D. W. Dillingham.	[L. S.]
William Van Marter.	[L. S.]	J. B. Hartman.	[L. S.]
George Ennis.	[L. S.]	J. H. Bourne.	[L. S.]
D. V. Teller.	[L. S.]	W'm Baltzel.	[L. S.]
Charles Hazen.	[L. S.]	George E. Sisson.	[L. S.]
George Croul.	[L. S.]	D. B. Westfall.	[L. S.]
C. C. Tindall.	[L. S.]	J. T. Degolier.	[L. S.]
Joseph McCall.	[L. S.]	Ira Mirick.	[L. S.]

Circuit court of the United States for the northern district of New York.

134 UNITED STATES OF AMERICA,
State of New York, Wayne County, ss:

On this 10th day of December, 1875, before me, the subscriber, personal' appeared William Van Marter, George Ennis, Daniel V. Teller, Charles Hazen, George Croul, Joseph McCall, Murray J. Waterman, David McCleland, Oliver C. Sutton, William Bradley, Delos W. Dillingham, John H. Bourne, William Baltzell, George C. Sisson, Daniel B. Westfall, Joseph T. Degolier, Ira Mirick, Charles Bostwick, Newell T. Vanderbilt, George W. Jackson, Cyrus E. Jackson, and Thomas J. Agett, to me personally known to be the same persons described in and who executed the foregoing and annexed instrument, and acknowledged that they executed the same.

Witness my hand and official seal the day last above written.

[L. S.] A. JUDD NORTHRUP,
U. S. C. C. Commissioner, North'n Dist. of New York.

135 UNITED STATES OF AMERICA,
Northern District of New York, Wayne County, ss:

William Van Marter, George Ennis, Daniel V. Teller, Charles Hazen,

George Croul, Joseph McCall, Murray J. Waterman, David McClelland, Oliver C. Sutton, William Bradley, Delos W. Dillingham, John H. Bourne, William Baltzel, George C. Sisson, Daniel B. Westfall, Joseph T. Degolier, Ira Mirick, Charles Bostwick, Newell T. Vanderbilt, George W. Jackson, Cyrus E. Jackson, & Thomas W. Agett, of the town of Lyons, in the county of Wayne aforesaid, the sureties in the foregoing and annexed bond, being duly sworn, depose and say, and each for himself deposes and says, that he is a freeholder and householder, resident within the said county of Wayne, in said district, to wit, the town of Lyons aforesaid, and that he is worth two thousand dollars over and above all debts and liabilities that he has incurred.

Charles Hazen.	George Croul.
J. H. Bourne.	W'm Van Marter.
David McClelland.	J. T. Degolier.
W'm Bradley.	George Ennis.
O. C. Sutton.	Cha's Bostwick.
Newell T. Vanderbilt.	
136,137 M. J. Waterman.	W'm Baltzel.
Ira Mirick.	Geo. W. Jackson.
D. V. Teller.	C. E. Jackson.
Thomas J. Agett.	D. B. Westfall.
George E. Sisson.	Joseph McCall.
Jefferson Sparks.	D. W. Dillingham.

Subscribed & sworn to before me this 10th day of December, 1875.
[L. S.] A. JUDD NORTHRUP,
U. S. C. C. Commissioner, North'n District of New York.

138 (Indorsed:) Circuit court of the United States, northern district of New York. Edgar Munson vs. The Town of Lyons. Supersedeas bond. Penalty $30,000.

I approve the within bond as to its form and the sufficiency of the sureties to operate as a supersedeas.

W'M J. WALLACE.

Filed Dec. 11, 1875.

139 UNITED STATES OF AMERICA, *ss:*

To Edgar Munson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of New York, wherein the Town of Lyons is plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 10th day of December, in the year of our Lord one thousand eight hundred and seventy-five.

W'M J. WALLACE,
Judge U. S. Dist. Court.

140 Circuit court of the United States for the northern district of New York.

STATE OF NEW YORK,
Munroe County, ss :

CHARLES H. ROYS, being duly sworn, deposes and says that he is an attorney of the supreme court of the State of New York, and an attorney of the circuit court of United States above named, and resides in the village of Lyons, in the county of Wayne, and State of New York; that on the 13th day of December, 1875, at the law-office of Cogswell & Perkins, in the city of Rochester, in said State of New York, deponent personally served the within citation on J. B. Perkins, esq., by delivering to and leaving with him a copy thereof; and deponent further says that the said J. B. Perkins, the person so served, has been and is the attorney and solicitor of Edgar Munson, the person named in the within citation as defendant in error therein.

C. H. ROYS.

Subscribed and sworn to before me this 13th day of December, A. D. 1875.

[SEAL.] J. D. HUSBANDS,
U. S. C't C't Com'r in & for said District.

(Indorsed:) Supreme Court of the United States. The Town of Lyons, plaintiff in error, vs. Edgar Munson, defendant in error. Citation. H. L. Comstock, attorney for plaintiff in error.

Due personal service of a copy of the within citation is admitted this day of December, 1875.

Filed Dec. 15, 1875.

141 UNITED STATES OF AMERICA,
Northern District of New York, ss :

I, Charles Mason, clerk of the circuit court of the United States of America for the northern district of New York, do hereby certify that I have compared the writings annexed to this certificate and they are correct and true copies of their respective originals and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of Edgar Munson vs. The Town of Lyons.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Utica this 14th day of September, A. D. 1876.

[SEAL.] CHARLES MASON, *Clerk.*

(Indorsed:) Supreme Court of the United States. The Town of Lyons, plaintiff in error, vs. Edgar Munson, defendant in error. Writ of error & return.

(Indorsement on cover:) No. 214. The Town of Lyons, plaintiff in error, vs. Edgar Munson. N. New York C. C. U. S. Filed 10th October, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 214.

THE TOWN OF LYONS, PLAINTIFF IN ERROR,

vs.

EDGAR MUNSON, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

H. L. COMSTOCK,

Attorney and of Counsel for Plaintiff in Error.

Repository-Messenger Print, Canandaigua, N. Y.

SUPREME COURT

OF THE

UNITED STATES.

U. S. SUPREME COURT.

THE TOWN OF LYONS,
Plaintiff in Error,
vs.
EDGAR MUNSON,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This cause arises upon the return to a writ of error issued out of this court to the Circuit Court of the United States for the Northern District of New York. The cause was tried at the Circuit Court held at Utica on the 16th day of March, 1875, by and before the Hon. William J. Wallace, District Judge of said district, holding said court.

The action was brought to recover the amount claimed to be due upon three hundred and eighty-seven instru-

ments in writing, called coupons, which had been detached from one hundred and twenty-nine instruments in writing, called bonds, purporting to have been executed by certain alleged commissioners of the town of Lyons. The plaintiff claimed no title to the bonds, but claimed title to the coupons on which he sought to recover; and he sought to recover upon said alleged coupons as separate instruments, detached from said alleged bonds. The bonds were each for the sum of $1,000, and were all alike except as to their number, time of payment, and the number of coupons attached thereto—one of which bonds, being No. 1, is in the words and figures following, to wit:

"UNITED STATES OF AMERICA.
"STATE OF NEW YORK, COUNTY OF WAYNE.
"Town of Lyons.

"*No.* 1. *Seven per cent. Bond.* $1,000.

"Know all men by these presents that the town of Lyone acknowledges itself indebted unto or bearer, in the sum of one thousand dollars lawful money of the United States, which sum it promises to pay at the Central National Bank of the city of New York, on the first day of April, in the year 1892, with interest from the 17th day of May, in the year 1872, at the rate of seven per cent., payable semi-annually, on the first days of April and October, in each year, on the presentation and delivery of the proper interest warrants.

"This bond is one of a series of one hundred and fifty bonds, bearing even date herewith, for one thousand dollars each, numbered consecutively from one to one hundred and fifty, both inclusive, created and issued under the authority contained in chapter nine hundred and seven of the laws of 1869, and the amendments thereto, and under and pursuant to a judgment and determination of the county judge of Wayne county, dated May 17th, 1872, duly rendered and entered of record under and pursuant to a petition of the tax-payers of said town, praying that said town issue its bonds to the amount of one hundred and fifty thousand dollars, and invest the same in the capital stock of the Sodus Bay, Corning and New York railroad company, a corporation duly created under the laws of this State, and under and pursuant to an appointment of said county judge appointing and commissioning us, the undersigned, David F. Cole, W. D. Perrine, and Dwight S. Chamberlain, as commissioners of said town,

for the purposes set forth in said acts of the legislature of this State.

"In witness whereof, we, the said commissioners, have hereunto set our hands and affixed our seals this 17th day of May, A. D., 1872.

"DAVID F. COLE. [L. S.]
"W. D. PERRINE. [L. S.]
"DWIGHT S. CHAMBERLAIN. [L. S.]
"*Commissioners.*"

(See Record, pages 66, 67).

At the foot of each of these instruments is the following certificate, viz.:

"WAYNE COUNTY, ss:—Registered in the county clerk's office.

"In witness whereof, the clerk of Wayne county has hereto set his hand and affixed his seal of office.

[L. S.] "ALFRED F. REDFIELD, *Clerk.*"

The coupons were all alike, except as to the time of their payment, and the number of the bond from which they were detached. The following is a copy of one of them, viz.:

"On the first day of October, 1872, the town of Lyons, State of New York, will pay to the bearer $35, at the Central National Bank in the city of New York, for six months' interest on bond No. 1, of said town for $1,000.

"DAVID F. COLE,
"W. D. PERRINE,
"D. S. CHAMBERLAIN,
"*Commissioners.*"

(See Record, page 72).

Chapter 907, of the laws of 1869, referred to in the bonds, is a general statute, passed May 18, 1869. The following sections of that act are quoted as necessary to the decision of the case, to wit:

"SECTION 1. Whenever a majority of the tax-payers of any municipal corporation in this State, whose names appear upon the last preceding tax-list or assessment-roll of said corporation as owning or representing a majority of the taxable property in the corporate limits of such corpo-

ration, shall make application to the county judge of the county in which such corporation is situated, by petition, verified by one of the petitioners, setting forth that they are such a majority of tax-payers and represent such a majority of taxable property, and that they desire that such municipal corporation shall create and issue its bonds to an amount named in such petition (but not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll) and invest the same or the proceeds thereof in the stock or bonds (as said petition may direct) of such railroad company in this State as may be named in said petition, it shall be the duty of said county judge to order that a notice shall be forthwith published in some newspaper in such county, or, if there be no newspaper published in said county, then in some newspaper printed in an adjoining county, directed to whom it may concern, setting forth that, on a day therein named, which shall not be less than ten days nor more than thirty days from the date of such publication, he will proceed to take proof of the facts set forth in said petition as to the number of tax-payers joining in such petition, and as to the amount of taxable property represented by them. And any solvent, monied, manufacturing or other corporation or company formed under the laws of this State, and being assessed on real or personal property therein, shall have all the rights and privileges under this act, so far as property representation is concerned, as other tax-payers. And the board of directors or trustees of any such corporation or company may apply to the county judge by petition in the same manner as herein provided for other tax-payers. The words 'municipal corporation,' when used in this act, shall be construed to mean any city, town or incorporated village in this State. But nothing herein contained shall be construed as to include the city or counties of New York, Kings, Erie, Greene, Albany, Westchester, Ontario, Seneca, Yates, Onondaga and Niagara.

§ 2. It shall be the duty of the said judge at the time and place named in said notice to proceed to take proof as to the said allegations in said petition; and if it shall appear satisfactorily to him that the said petitioners, or the said petitioners and such other tax-payers of said town as may then and there appear before him and express a desire to join as petitioners in said petition, do represent a majority of the tax-payers of said municipal corporation as shown by the last preceding tax-list or assessment-roll, and do represent a majority of the taxable property upon said list or roll, he shall so adjudge and determine and

cause the same to be entered of record. And such judgment and the record thereof shall have the same force and effect as other judgments and records in courts of record in this State

"§ 3. If the said judge shall adjudge and determine that such petitioners do represent a majority of such tax-payers, as aforesaid, and a majority of such taxable property, as aforesaid, it shall be his duty forthwith to appoint and commission three persons, who shall be freeholders, residents and tax-payers within the corporate limits of such corporation, to be commissioners for the purposes hereinafter named. The said commissioners shall hold their offices for five years and until others are appointed by the county judge of said county, and shall, before entering upon the duties of their office, each make oath faithfully to discharge all the duties thereof. All vacancies in such commission shall be filled by said county judge as they occur. Said commissioners shall each receive the sum of three dollars per day for each day actually engaged in the discharge of their duties, and their necessary disbursements, to be audited and paid by the usual disbursing officer of such municipal corporation. A majority of such commissioners, at a meeting of which all have notice, shall constitute a quorum and may exercise the powers of the commission.

"§ 4. It shall be the duty of such commissioners, with all reasonable despatch, to cause to be made and executed the bonds of such municipal corporation, attested by the seal of such corporation affixed thereto, if such corporation has a common seal, and if not, then by their individual seals, and signed and certified by said commissioners, who are hereby authorized and empowered to affix such common seal thereto and to so sign and certify such bonds. Such bonds shall become due and payable at the expiration of thirty years from their date, and shall bear interest at the rate of seven per cent. per annum, payable semi-annually, and shall not exceed in amount twenty per cent. of the entire taxable property within the bounds of said municipal corporation as shown by said tax-list, nor shall they exceed in amount the amount set forth in such petition. The said bonds shall al-o bear interest warrants corresponding in number and amounts with the several payments of interest to become due thereon, but the commissioners may agree with the holders to register any such bonds, in which case the interest warrants on the registered bonds shall be surrendered, and the interest shall be payable only on the production of the registered bonds, which shall then be transferable only on the commissioners' rec-

ords. The savings banks of this State are authorized to invest in said bonds, not to exceed ten per cent. of their deposits. All taxes except school and road taxes, collected for the next thirty years, or so much thereof as may be necessary, in any town, village or city, on the assessed valuation of any railroad in said town, village or city, for which said town, village or city has issued or shall issue bonds to aid in the construction of said railroad, shall be paid over to the treasurer of the county in which said town, village or city lies, and said money so paid over, including interest collected on bonds held by said treasurer as a sinking fund, shall be invested by said treasurer in state, city, town, county or village bonds, issued pursuant to law of this State on United States bonds, within sixty days after receiving the same, and shall be held by said county treasurer as a sinking fund for the redemption and payment of the bonds issued or to be issued by said town, village or city, to aid in the construction of said railroad.

"§ 5. Such commissioners are further empowered and directed to subscribe in the name of the municipal corporation which they represent, to the stock or bonds of the railroad company named in such petition (as the petition may direct), to an amount equal to the amount of bonds so created by them, and to pay for the same by exchanging the said bonds therefor at par; or they may, at their discretion, sell and dispose of the said municipal corporation bonds so created by them at rates not less than par and invest the proceeds thereof in such stock or bonds of such railroad company as may be directed in said petition. They shall represent, either in person or by proxy, such municipal corporation at all meetings of such railroad bondholders or stockholders. Such stock or bonds so purchased by said commissioners may be sold by them before the maturing of the bonds of such municipal corporation only upon the order of the county judge of the county, made upon a petition of the majority of the taxpayers of said municipal corporation representing a majority of the taxable property thereof, as shown by the last preceding tax-list or assessment-roll; and the proceeds from such sale shall be forthwith paid by them to the treasurer (or other proper officer) of such municipal corporation, to be by him invested in a sinking fund, as hereinafter provided. Such commissioners may vote for directors on the stock of such town, village or city.

"§ 6. The bonds of any municipal corporation, issued pursuant to the provisions of this act, shall be a charge upon the real and personal estate within the limits thereof,

and the principal and interest thereof when due (or so much thereof as shall fail to be met by the interest on such railroad bonds or the dividends on such railroad stock, or the sinking fund herein provided for) shall be collected and paid in like manner as other debts, obligations and charges against the said municipal corporation. The said commissioners shall also provide within three years from the time of issuing said bonds, for the payment of at least one per cent. of the same to constitute a sinking fund, so as to secure the final liquidation of said bonds within twenty-five years after their date, and for that purpose they shall receive and apply annually the surplus dividends on the stock held by said towns over the amount necessary to pay the annual interest on said bonds, and if the amount of such surplus dividends is not sufficient for the annual payment of said one per cent., and the said commissioners shall not have received sufficient from the sale of the stock belonging to the town to pay the same, and from other sources as herein provided, then the deficiency shall be reported by the commissioners to the board of supervisors, to be levied and raised annually in the manner herein provided for paying the interest on said bonds. The treasurer (or other proper officer of such municipal corporation) shall have the custody of any railroad bonds or certificates of stock that may be subscribed for as aforesaid, and shall collect the interest upon such bonds or the dividends upon such stock as it becomes due or is made payable, and shall apply the same towards the payment of the interest from time to time becoming due upon the said bonds of said municipal corporation; any surplus of interest or dividends, after providing for the interest upon the bonds of said municipal corporation, shall go to make up a sinking fund for the redemption of the principal of said corporation bonds. In case the stock or bonds purchased as aforesaid are sold by said commissioners, such treasurer or other officer shall also invest the proceeds thereof in a like sinking fund; and in case the same are not sold when the said bonds hereby authorized to be created and issued by said commissioners shall mature and the principal thereof become payable, the commissioners shall sell the same or so much thereof as shall be necessary to pay the outstanding principal sum due on such bonds in full, and shall pay the proceeds thereof to such treasurer or other proper officer, to be by him applied to the redemption and payment of such bonds.

"§ 7. The monies received by any railroad company from any such commissioners, or from the sale of any bonds of any municipal corporation which they may re-

ceive under the provisions of this act, shall be by the said company faithfully applied to the construction and equipment of such railroad, and to no other purpose; and any other use thereof by any officer or agent of such company shall be deemed to be a misdemeanor, and shall be punished on conviction by imprisonment in the county jail for a term not exceeding five years.

"§ 8. The bonds of any municipal corporation which may be issued under the provisions of this act shall be registered in the office of the county clerk of the county in which such corporation is situated, and shall have the words 'registered in the county clerk's office' written or printed upon them, attested by the official seal of said clerk; and said clerk shall receive for each such attestation the sum of twenty cents."

Sections nine and ten of this act are omitted, because they have no possible application to this case. Section eleven provides that "This act shall take effect immediately." This act will be found in the Session Laws of New York for 1869, p. 2,303; also in vol. 7 of Edmonds' Statutes at Large, p. 517.

By chapter 789 of the laws of 1870, section 4 of the act of 1869 was very slightly amended, but not in any respect material to this case.

By chapter 173, of the laws of 1870, the words "Seneca, Yates and Ontario," were stricken out of the first section of the act of 1869, and that act was made applicable to those counties.

By chapter 507, of the laws of 1870, it was provided as follows:

"SECTION 1. It shall be competent for any corporation, in aid of the construction of whose railroad bonds shall have been authorized to be issued by any municipal corporation in this State, to enter into any agreement with the commissioners appointed to issue said bonds, limiting and defining the times when, and the proportions in which, said bonds or their proceeds shall be delivered to said corporation, and the place or places where, and the purposes for which, such bonds or their proceeds shall be applied or used, and any such agreement in writing, duly executed by such corporation, and a majority of such commissioners, shall in all courts and places be valid and

effectual. And such commissioners shall not be compelled by any court to deliver such bonds or their proceeds to such corporation, until such agreement shall be executed, if required by them.

"§ 2. This act shall take effect immediately."

The foregoing acts of the legislature of New York present the law as it stood at the time when the proceeding to bond the town of Lyons was commenced. That proceeding was commenced on the 6th day of February, 1871; but it was not terminated, nor any judgment rendered by the county Judge of Wayne county, until the 17th day of May, 1872.

While the case was pending before the county Judge, the legislature slightly amended section 4 of the act of 1869, by chapter 283, of the laws of 1870; but the amendment is so slight,—being merely a verbal correction,—as to be of no consequence in this case.

On the 12th day of May, 1871, the legislature amended the act of 1869 very materially, by chapter 925 of the laws of that year. This act was passed while the proceeding was pending before the county Judge of Wayne county to bond the town of Lyons, and nearly a year before that officer rendered his judgment. As this act is deemed very material, it is copied entire. It is as follows:

"CHAP. 925.

"AN ACT to amend chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine, entitled, 'An act to amend an act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of railroads, and also to amend chapter five hundred and seven of the laws of eighteen hundred and seventy, entitled 'An act to define the powers of commissioners appointed under chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine, bonding municipalities to aid in the construction of railroads.'"

"Passed May 12, 1871; three-fifths being present.

"*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

"SECTION 1. Section first of chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine is hereby amended so as to read as follows:

"§ 1. Whenever a majority of the tax-payers of any municipal corporation in this State who are taxed or assessed for property, not including those taxed for dogs or highway tax only, upon the last preceding assessment-roll or tax-list of said corporation, and who are assessed or taxed, or represent a majority of the taxable property, upon said last assessment roll or tax-list, shall make application to the county judge of the county in which such municipal corporation is situate, by petition, verified by one of the petitioners, setting forth that they are such majority of tax-payers, and are taxed or assessed for or represent such a majority of taxable property, and that they desire that such municipal corporation shall create and issue its bonds to an amount named in such petition, and invest the same, or the proceeds thereof, in the stock or bonds (as said petition may direct) of such railroad company in this State as may be named in said petition, it shall be the duty of said county judge to order that a notice shall be forthwith published in some newspaper in such county, or, if there be no newspaper published in said county, then in some newspaper printed in an adjoining county, directed to whom it may concern, setting forth that on a day therein named, which shall not be less than ten days nor more than thirty days from the date of such publication, he will proceed to take proof of the facts set forth in said petition as to the number of tax-payers joining in such petition, and as to the amount of taxable property represented by them. Any solvent corporation or company assessed or taxed on said last assessment-roll or tax-list may join in such petition, and shall have all the rights and privileges under this act as other tax-payers. Any person, partnership or corporation upon whom it shall have been intended to levy a tax by virtue of said last assessment-list and tax-roll, under whatever name, and who shall have paid or are liable to pay such tax thus intended to be levied and assessed, shall be a tax-payer, entitled to represent the property thus taxed, and as such entitled to all the rights and privileges of this act. The petition authorized by this section may be absolute or conditional; and if the same be conditional the acceptance of a subscription founded on such petition shall bind the railroad company accepting the same to the observance of the condition or conditions specified in such petition; provided, however, that non-compliance with any condition inserted in such petition shall not in any man-

ner invalidate the bonds created and issued in pursuance of such petition. No municipal corporation shall issue its bonds under the provisions of this act for a greater amount than twenty per centum of the taxable property thereof as appears on its said last assessment-list or tax-roll. The words 'municipal corporation' when used in this act shall be construed to mean any city, town or incorporated village in this State, and the word 'tax-payer' shall mean any corporation or person assessed or taxed for property, either individually or as agent, trustee, guardian, executor or administrator, or who shall have been intended to have been thus taxed and shall have paid or are liable to pay the tax as hereinbefore provided, or the owner of any non-resident lands, taxed as such, not including those taxed for dogs or highway tax only, and the words 'tax-list or assessment-roll' when used in this act shall mean the tax-list or assessment roll of said municipal corporation last completed before the first presentation of such petition to the judge. But nothing herein contained shall be construed so as to include the city of New York, or the counties of New York, Kings, Erie, Weschester, Onondaga, and the town of Royalton in the county of Niagara, within the provisions of this act.

"§ 2. Section two of chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine is hereby amended so as to read as follows:

"§ 2. It shall be the duty of the said county judge at the time and place named in the said notice to proceed and take proof as to the said allegations in said petition, and if it shall appear satisfactorily to him that the said petitioners, or the said petitioners and such other tax-payers of said municipal corporation as may then and there appear before him and express a desire to join as petitioners in said petition, do represent a majority of the tax-payers of said municipal corporation as shown by the last preceding tax-list or assessment-roll, and do represent a majority of the taxable property upon said list or roll, he shall so adjudge and determine, and cause the same to be entered of record in the office of the clerk of the county in which said municipal corporation is situated, and such judgment and the record thereof shall have the same force and effect as other judgments and records in courts of record in this State; and in case any county judge, to whom any such petition may have been presented, shall be declared incompetent or ineligible, or in any manner disqualified to hear the same, by any court on certiorari from any determination of such county judge in any proceeding under this act had before him, the original peti-

tions, filed with the county clerk in such proceeding and on such determination, may be taken from file and presented to a judge of an adjoining county or a justice of the Supreme Court; and in all such cases the same proceedings may be had before such county judge or justice of the Supreme Court as are required by the provisions of this act. The judge shall file the petition as part of the judgment-roll, and on making his final determination in any case, he shall forthwith publish notice thereof for three weeks, at least once in each week, in the same newspaper in which notice of such hearing was published as ordered.

"§ 3. Section ten of chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine is hereby amended so as to read as follows:

"§ 10. Nothing herein contained shall be construed as permitting any municipal corporation, in or through which a railroad has already been constructed and is in operation, to aid in the construction of any other railroad under the provisions of this act, unless the railroad already built is assessed or taxed upon the assessment roll specified in this act; provided, however, that this section shall not apply to any railroad exempted from taxation by any law of this State.

"§ 4. Review of proceedings under the acts hereby amended shall be by certiorari, and no writ of certiorari shall be allowed unless said writ shall be allowed within sixty days after the last publication of notice of the judge's final determination, as provided in section two of this act, and where such judgment is so entered prior to the passage of this act, unless said writ is allowed within sixty days after the passage of this act. On the return of the certiorari the court out of which the same is issued shall proceed to consider the matter brought up thereby, and shall review all questions of law and of fact determined for or against either party by the county judge. And the said courts or Court of Appeals in appeals now pending, and in all future proceedings, may reverse or affirm or modify, in all questions of law or fact, his final determination, or may remand the whole matter back to said county judge to be again heard and determined by him. And it may by order direct that he proceed thereon *de novo*, in the same manner and with the same effect as if he had taken no action therein, or it may by such order specify how and in what particulars he shall hear and determine the same on such remanding thereof. Applications for certiorari shall be on notice. On review, persons taxed for dogs or highway

tax only, shall not be counted as tax-payers, unless that claim was made before the county judge. The county judge shall forthwith proceed to carry into effect all orders of any court on review under this act.

"§ 5. Chapter five hundred and seven of the laws of one thousand eight hundred and seventy is hereby amended by adding to the end of section first as follows: But in case such commissioners and such railroad corporation cannot agree, or in case the said commissioners refuse to make any agreement, then in either case the Supreme Court at General Term may, on motion and after hearing all parties interested, determine upon what terms and conditions said bonds should be delivered to said railroad corporations, having due regard to the public good, the rights of said municipal corporation whose bonds are authorized to be issued, and the rights of said railroad corporation, and shall have power to compel the delivery of said bonds on such terms and conditions, and in such manner as it shall thus determine upon, by the usual process of the court. Said court shall also, by the usual process of said court in like cases, have power at any time to prevent by injunction the issue of said bonds or any portion thereof, on notice and for good cause shown. And any justice of said court may grant a temporary injunction until such motion can be heard.

"§ 6. Section four of chapter nine hundred and seven of laws of eighteen hundred and sixy-nine, as amended by chapter two hundred and eighty-three of the laws of eighteen hundred and seventy-one, is hereby amended by adding at the end thereof as follows: In case of a vacancy in the office of commissioner, or in case all commissioners are notified of any meeting, a majority of the commissioners shall have and exercise all the powers and duties of the three commissioners. The said commissioners may issue the said bonds payable at any time they may elect, less than thirty years, any law heretofore passed to the contrary, but they shall not so issue said bonds that more than ten per cent. of the principal of the whole amount of bonds issued shall become due or payable in any one year.

"§ 7. This act shall take effect immediately."

On the trial of this cause, the plaintiff called Alfred H. Gates, county clerk of Wayne county, who being sworn, testified that he had with him, and he produced, from the files of the clerk's office of said county of Wayne, the judgment-roll or judgment in a proceeding to bond

said town of Lyons, before the county judge of said county. "The judgment-roll was filed and judgment entered on the seventeenth day of May, 1872." This judgment-roll consisted of the following documents annexed together and constituting said judgment-roll, to wit: thirty-one several petitions, all being alike and in the same words and figures, except the signatures subscribed thereto, and each having some signatures subscribed to the same, and all being annexed together, each and every of which petitions, is in the words and figures following, excepting and omitting the signatures subscribed thereto, to wit:

"*To the County Judge of the county of Wayne:*

"The petition of the subscribers hereto respectfully represents that they are a majority of the tax-payers of the town of Lyons, in said county, whose names appear upon the last preceding tax-list or assessment-roll of said town as owning or representing a majority of the taxable property in the corporate limits of such town; that they are such a majority of tax-payers, and represent such a majority of taxable property; that they desire that such town shall create and issue its bonds to the amount of one hundred and fifty thousand dollars, which does not exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll, and invest the same, or the proceeds thereof, in the stock of the Sodus Bay, Corning and New York railroad company, which is a railroad company in the State of New York; provided that the terminus of said road is made at Nicholas Point, on Sodus Bay, in the town of Huron.

"It is understood that the stock so to be taken is to embrace and include the stock now already subscribed and taken by persons residing in said town of Lyons, amounting to the sum of sixteen thousand and four hundred dollars.

"And your petitioners pray that such proceedings may be had for that purpose as are authorized and prescribed by the statutes in such case made and provided.

"Dated, , 1870."

NAMES.	RESIDENCES.

Annexed to said petitions was an affidavit of verification by D. W. Parshall, one of the petitioners, sworn to

before the county judge of Wayne county, on the 6th day of February, 1871. No point is made as to the sufficiency of this affidavit.

Annexed to said petition and affidavit was a notice of the time and place appointed by the county judge for the hearing of said petition, and an order for the publication of said notice, both dated February 6th, 1871; as to which no point is raised. It is proper, however, for me to concede that the day named in the notice as stated in the printed record, viz.: "the 23d day of February, 1874," is a mistake. It should have been 1871, as is recited in the judgment of the county judge. The original notice so states, and I claim nothing from the mistake.

Annexed to said order and notice is an affidavit of the publication thereof; as to which no point is made. Annexed to all the foregoing papers is the judgment or adjudication of the said county judge, which is in the words and figures following, to wit:

"In the matter of the petition of the tax-payers of the town of Lyons, Wayne county, that said town create and issue its bonds to the amount of one hundred and fifty thousand dollars, and invest the same, or the proceeds of the same, in the stock of the Sodus Bay, Corning and New York railroad company, pursuant to an act of the legislature of the State of New York, entitled 'An act to amend an act to authorize the formation of railroad corporations and to regulate the same,' passed April 20, 1850, so as to permit municipal corporations to aid in the construction of railroads, passed May 18, 1869, and the several acts amendatory thereof.

"Before L. M. Norton, Wayne County Judge.

"Whereas on the 6th day of February, 1871, an application was made to the county judge of the county of Wayne, by certain tax-payers of the town of Lyons, in said county, purporting to be a majority of the tax-payers of said town, whose names appear upon the last preceding tax-list or assessment-roll of said town, as owning or representing a majority of the taxable property in the corporation limits of such town, by petition verified by D. W. Parshall, one of the petitioners, setting forth that they are a majority of the tax-payers of said town and represent a majority of the taxable property of said town,

as appears from the last preceding tax-list or assessment-roll of said town, and that they desire that said town shall create and issue its bonds to the amount of one hundred and fifty thousand dollars, and invest the same, or the proceeds of the same, in the stock of the Sodus Bay, Corning and New York railroad company, said railroad company being a company in this State, and praying the said judge to take all and singular the proceedings requisite for that purpose, pursuant to the statutes in such case made and provided.

"Whereupon the said county judge, on said 6th day of February, 1871, pursuant to the statute, duly made an order that notice should be forthwith published in the Lyons Republican, a newspaper published at Lyons, in the county of Wayne, 'to whom it may concern,' setting forth that on the 23d day of February, 1871, at 10 o'clock in the forenoon of that day, at the Surrogate's office in the village of Lyons, in said county, the said county judge would proceed to take proof of the facts set forth in said petition, as to the number of tax-payers joining in said petition, and as to the amount of taxable property represented by said petitioners.

"And whereas on the 23d day of February, 1871, at ten o'clock in the forenoon of that day, proof having been duly made to the said county judge of the publication of said notice, pursuant to said order, the parties interested in said matter and proceedings appeared before said county judge at the said Surrogate's office aforesaid, Wm. Clark, Esq., G. H. Camp, Esq., and T. W. Collins, Esq., appearing as counsel for said petitioners, and in favor of said application, and J. Welling, Esq., C. Mason, Esq., and C. H. Roys, Esq., appearing as counsel for those opposed to said application, and on that day, and the days to which said proceedings were duly adjourned, made proof before me of the facts set forth in said petition, as to the number of tax-payers joining in said petition, and as to the amount of taxable property owned or represented by them, as shown by the last preceding tax-list or assessment-roll of said town, and as to the whole number of tax-payers of said town, and of the whole amount of taxable property of said town, as shown by the last preceding tax-list or assessment-roll of said town, and of all the facts necessary to be taken into consideration relating thereto; and other tax-payers of said town then and there appeared before said county judge and expressed a desire to join as petitioners in said petition, and did so join as petitioners in said petition and in the said application to bond said town for the purposes aforesaid;

and proof being taken as to the number of tax-payers so joining in said petition and application with the other petitioners, and as to the amount of taxable property represented by them as appearing upon the said tax-list or assessment-roll, and after hearing the argument of the counsel aforesaid, it appearing satisfactorily to the said county judge that the said petitioners whose names appear upon said tax-list or assessment-roll, and the other tax-payers aforesaid of said town, who did then and there, on such proceedings, appear before him and express a desire to join in such application aforesaid, and who did so join, and whose names also appeared upon said tax-list or assessment-roll, do represent a majority of the tax-payers of said town, as shown by the said last preceding tax-list or assessment-roll, said tax-list or assessment-roll being the tax-list or assessment-roll of the year 1870, and do own or represent a majority of the taxable property upon said list or roll, and that the said amount of bonds named in such petition does not exceed twenty per cent. of the whole amount of taxable property, as shown by said tax-list or assessment roll.

"It is hereby adjudged and determined by the said county judge, and the said county judge doth hereby adjudge and determine, in pursuance of the statutes in such case made and provided, that said petitioners whose names appear upon said tax-list or assesment-roll, and who are assessed thereon, and the other tax-payers aforesaid of said town who did then and there, on such proceedings, appear before him and express a desire to join in said petition, and with the other petitioners in said application to bond said town, and who did so join, and whose names also appear upon said tax-list or assessment-roll as being assessed thereon, do represent a majority of the tax-payers of said town, as shown by the said last preceding tax-list or assessment-roll, the same being the tax-list and assessment roll of the year 1870, and do own or represent a majority of the taxable property, as shown by said last preceding tax-list or assessment-roll, and the said county judge hereby orders and directs that this judgment and determination be duly entered for record with the clerk of the county of Wayne.

"And I do further file the petition which is hereto annexed as a part of this record and judgment-roll, and I do further direct that notice of this final determination be published for three weeks, at least once in each week, in the same newspaper in which notice of such hearing was published, as aforesaid.

"And I do hereby appoint and commission three per-

sons, to wit, David F. Cole, William D. Perrine and Dwight S. Chamberlain, who are freeholders, residents and tax payers within the corporate limits of the said town of Lyons, for the purpose named in the act, entitled 'An act to amend An act to authorize the formation of railroad corporations, and to regulate the same, passed April 2, 1850, so as to permit municipal corporations to aid in the construction of railroads,' passed May 18, 1869, and the several acts amending the same, and amendatory thereof, so far as the same relates to the matters heieinbefore referred to.

"In witness whereof the said county judge hath hereunto set his hand this 17th day of May, 1872.

"L. M. NORTON, *Wayne Co. Judge.*"

(See Record, pages 59–64).

FIRST EXCEPTION.

The counsel for the plaintiff then offered to read said judgment-roll in evidence: to which the counsel for the said defendant objected, on the ground that the said petition of the tax-payers of the town of Lyons to the said county judge is not drawn in conformity with the statute authorizing proceedings for the bonding of municipal corporations, and therefore it did not confer jurisdiction upon said county judge to entertain such proceedings, nor to render any judgment therein, for the following reasons:

First. The said petition contains a condition in these words: "Provided that the terminus of said road is made at Nicholas Point, on Sodus Bay, in the town of Huron."

Second. The said petition contains another qualifying clause, in these words, to wit: "It is understood that the stock so to be taken is to embrace and include the stock now already subscribed and taken by persons residing in the said town of Lyons, amounting to the sum of sixteen thousand and four hundred dollars."

Third. The condition first above mentioned was unauthorized by the statute when the said petition was presented to, and acted upon by, said county judge, and it rendered said petition void.

Fourth. The qualifying clause secondly above referred to was unauthorized by the statute, and it rendered said petition illegal and void.

Fifth. By reason of each of these clauses in said petition, the said petition was insufficient to confer jurisdiction upon said county judge of said proceedings, and said judgment is void.

His Honor, the Judge, overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted.

(See Record, pages 64, 65).

SECOND EXCEPTION.

The counsel for the defendant then and there objected to the reading of said judgment-roll, or judgment, in evidence, on the ground that said proceeding before the County Judge of Wayne county to bond said town of Lyons, having been commenced under the general bonding act of 1869 (laws of 1869, chap. 907), and while it was in full force, and before the act of 1871 (laws of 1871, chap. 925), had become a law, and remaining unfinished when the act of May 12th, 1871, took effect, said proceeding could not be completed under either of said acts, but was completely arrested, because the said act of 1871, operated as a repeal of section one of said act of 1869, and because said act of 1871 had no retroactive effect to uphold proceedings instituted before it became a law, and because said petition was not drawn in conformity with said act of 1871.

His Honor, the Judge, overruled said objection, to which ruling and decision the counsel for said defendant then and there excepted.

The said judgment-roll, consisting of the documents aforesaid, was then read in evidence.

(See Record, page 65).

The plaintiff's counsel then proved and read in evidence the written oath taken by the said alleged commissioners.

The counsel for the plaintiff then read in evidence a certified copy of the articles of association of the Sodus Bay, Corning and New York Railroad Company, by which it appeared that said articles of association were verified on

the 11th day of June, 1870, and filed in the office of the Secretary of State on the 17th day of June, 1870. The third article in said articles of association, is in the words following, to wit:

"Third. The places from and to which said railroad is to be constructed, maintained and operated, are as follows: Commencing at or near the village of Corning, on the New York and Erie Railway, in the county of Steuben and State of New York, thence by the most direct and feasible route, via Savona, Bradford, Penn Yan, Geneva and Lyons, and to terminate on Great Sodus Bay, in the county of Wayne, in the State of New York.

(See Record, pages 65, 66).

THIRD EXCEPTION.

The counsel for said plaintiff then offered to read in evidence the one hundred an twenty-nine bonds hereinbefore referred to, and a copy of one of which is above given, all being alike, except as to number, time of payment and the number of coupons attached thereto, and being the same as described in the plaintiff's complaint.

The counsel for the defendant then and there objected to the reading of the said several alleged bonds in evidence, on each of the following grounds, viz.:

First. Because the said petition of the tax-payers of the town of Lyons to the County Judge of Wayne county is void on its face, by reason of the qualifying clause contained therein, in these words, to wit: "It is understood that the stock so to be taken is to embrace and include the stock now already subscribed and taken by persons residing in said town of Lyons, amounting to the sum of sixteen thousand and four hundred dollars."

Second. Because, by reason of said qualifying clause in said petition, and other defects therein, the said County Judge had no jurisdiction to entertain said petition nor to render any judgment thereon.

Third. That said decision or judgment of said County Judge is null and void.

His Honor, the Judge, overruled said objection, to

which ruling and decision the counsel for said defendant then and there excepted.

(See Record, pages 66, 67).

FOURTH EXCEPTION.

The counsel for the defendant then and there, also, in due time, objected to the reading of said several alleged bonds in evidence, because the proceeding before the County Judge of Wayne county to bond said town of Lyons, having been commenced under the general bonding act of 1869 (Laws of 1869, chap. 907), and while it was in force, and before the act of 1871 (Laws of 1871, chap. 925) took effect, it could not be completed under either of said acts, because said act of 1871 operated as a repeal of section one of said act of 1869, and because said act of 1871 had no retroactive effect to sustain proceedings commenced before it became a law, and because the petition of the tax-payers of said town did not comply with said act of 1871.

His Honor, the Judge, overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted.

(See Record, page 67).

FIFTH EXCEPTION.

The counsel for said defendant then and there, also, in due time, objected to the reading of the said several bonds in evidence, because the said judgment of the said County Judge is void, and the said pretended appointment of said commissioners is void, and they had no authority to issue said bonds.

His Honor, the Judge, overruled said objection, to which ruling and decision the counsel for said defendant then and there excepted.

(See Record, pages 67, 68).

SIXTH EXCEPTION.

The counsel for the defendant then and there also objected to the reading of the said several bonds in evidence,

on the ground that they were not issued in conformity with any statute then in force, or any lawful authority, because the interest is not made payable semi-annually, but is made payable on the first days of April and October in each year during the whole term of credit, but the bonds are dated on the 17th day of May, 1872, and the interest should have been made payable on the 17th days of May and November in each year after their date, during the term of credit.

His Honor, the Judge, overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted.

(See Record, page 68).

SEVENTH EXCEPTION.

The counsel for the defendant then and there also objected to the reading of said several alleged bonds in evidence, because the tax-payers of said town of Lyons never consented to the bonding of said town in any such way; that the consent which they gave was to the bonding of the said town by bonds to be issued payable in thirty years, with interest payable semi-annually, whereas the bonds were issued payable in from twenty to thirty years, under another statute which was not in force when the tax-payers signed their assent.

His Honor, the Judge, overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted.

(See Record, page 68).

The counsel for the defendant then and there also objected to the reading of the said several alleged bonds in evidence, because the execution thereof had not been proved.

The counsel for the plaintiff then proved the signatures of the said David F. Cole, William D. Perrine and Dwight S. Chamberlain to said bonds to be their genuine signatures, and also proved that they did not sign the coupons annexed to said bonds, but that their names were litho-

graphed to the same; and that said coupons were annexed to said bonds at the time of the execution thereof as aforesaid.

The said several objections to the reading of the said several bonds in evidence, having been overruled, and exceptions taken as aforesaid, the plaintiff's counsel produced said several bonds and read them in evidence.

The counsel for the plaintiff also proved the execution of a subscription, by the said alleged commissioners, upon a book kept by the railroad company, purporting to be a subscription to the capital stock of said railroad company; which subscription is in the words and figures following, to wit:

"SODUS BAY, CORNING AND NEW YORK RAILROAD COMPANY.

"*Subscriptions to the Capital Stock.*

"The towns hereunder written, in pursuance of the authority vested in them by law and by the judgment and determination of the county judge of the county in which said towns are respectively situated, duly rendered and entered of record by the commissioners duly appointed and qualified for that purpose, having severally subscribed, each town, the sum to be represented by shares of the par value of $100 each, set opposite the name thereof, to the capital stock of the Sodus Bay, Corning and New York Railroad Company, and in consideration of the benefits to result to such towns respectively from the construction of the road of said company in and through the same, and the certificates of stock to be issued to each of said towns, upon payment of the subscription therefor, do severally promise and agree to and with said company, to deliver to said company, in payment of such subscription, the bonds of said town as authorized by law, in such amounts and at such time and times as the directors of said company shall call for the same.

"In witness whereof, the said towns, by their said commissioners, have caused their corporate names to be affixed

hereto, and the amounts they are respectively authorized to subscribe to said stock to be placed opposite thereto."

In a column headed "name of town," was written "Town of Lyons;" in a column headed "amount," was written in figures, "$135,000," and in a column headed "signatures of town commissioners," were written the names of "David F. Cole, W. D. Perrine, D. S. Chamberlain."

It was proved that the names of said commissioners were signed by them respectively to said subscription; that said subscription was made on the 17th day of May, 1872. It was also proved, that, at the same time, to wit, on the said 17th day of May, 1872, the said commissioners issued $135,000 of said bonds, and delivered the same to DeWitt Parshall, one of the directors of said railroad company, *under a written agreement between said commissioners and said railroad company, by DeWitt Parshall, its agent, dated May 17th, 1872, and which is hereinafter set out.*

It was also proved, that, at the time of the issuing of the one hundred and thirty-five thousand dollars of bonds aforesaid, the stock of the railroad company for that amount was issued to the said commissioners, and that the same was still held by them; the certificate of which stock was produced by one of the commissioners on his examination as a witness, and was in the words and figures following, to wit:

"*No.* 6. SODUS BAY & CORNING R. R. CO. 1,350 *shares.*

"This is to certify, that the town of Lyons, Wayne county, is entitled to thirteen hundred and fifty shares, at $100 each, of the capital stock of the Sodus Bay & Corning R. R. Co., transferable only on the books of the company in person or by attorney, on the surrender of this certificate.

"Corning, May 19th, 1872.

"H. SHERWOOD, *President.*

"FREDERICK W. PRINCE, *Secretary.*"

(See Record, page 69).

The record states, that, "It was also proved that at a subsequent time the said commissioners made a similar subscription for an additional amount of stock, viz., $150,000, and issued bonds therefor under the same agreement, and received therefor the stock of the company to that amount evidenced by a certificate in all respects the same as before, except the amount, which they still held."

The figures "$150,000," as above stated are erroneous. They should have been $15,000. I concede the mistake, without knowing how it occurred.

(See Record, page 70.)

EIGHTH EXCEPTION.

The counsel for the plaintiff then offered to read in evidence three hundred and eighty-seven coupons which had been annexed to said bonds, but were then detached therefrom, being the same coupons described in said complaint, and being those falling due on the 1st day of October, 1872, and those falling due on the 1st days of April and October, 1873.

The counsel for the defendant then and there duly objected to the reading of the said several alleged coupons in evidence, on each of the following grounds, viz.:

First. Because the said petition of the tax-payers of the town of Lyons to the County Judge of Wayne Co., is void on its face, by reason of the qualifying clause contained therein in these words, to-wit: "It is understood that the stock so to be taken is to embrace and include the stock now already subscribed and taken by persons residing in said town of Lyons, amounting to the sum of sixteen thousand and four hundred dollars."

Second. Because by reason of said qualifying clause in said petition and other defects therein, the said county judge had no jurisdiction to entertain said petition, nor to render any judgment thereon.

Third. That said decision or judgment of said county judge is null and void.

His Honor the Judge, overruled said objection, and to

which ruling and decision the counsel for said defendant then and there excepted.

(See Record, page 70.)

NINTH EXCEPTION.

The counsel for the defendant then and there also, in due time, objected to the reading of the said several alleged coupons in evidence because the proceeding before said County Judge of Wayne county to bond said town of Lyons, having been commenced under the general bonding act of 1869, (Laws of 1869, chap. 907), and while it was in full force, and before the act of 1871, (Laws of 1871, chap. 925), took effect, it could not be completed under either of said acts, because the said act of 1871 operated as a repeal of section one of said act of 1869, and because said act of 1871 had no retroactive effect to sustain proceedings commenced before it became a law, and because the petition of the tax-payers of said town did not comply with said act of 1871.

His Honor, the Judge, overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted.

(See Record, page 70).

TENTH EXCEPTION.

The counsel for the said defendant then and there also, in due time, objected to the reading of the several alleged coupons in evidence, because the said judgment of the said County Judge is void, and the said pretended appointment of said commissioners is void, and they had no authority to issue said bonds.

His Honor, the Judge, overruled said objection, to which ruling and decision the counsel for said defendant then and there excepted.

(See Record, page 70).

ELEVENTH EXCEPTION.

The counsel for the defendant then and there also objected to the reading of the said several alleged coupons

in evidence, on the ground that they were not issued in conformity with any statute then in force, or any lawful authority, because the interest is not made payable semi-annually, but is made payable on the first days of April and October in each year, during the whole term of credit, but the bonds are dated on the 17th day of May, 1872, and the interest should have been made payable on the 17th days of May and November of each year after their date, during the term of credit.

His Honor, the Judge, overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted.

(See Record, pages 70, 71).

TWELFTH EXCEPTION.

The counsel for the defendant then and there also objected to the reading of the said several alleged coupons in evidence, because the tax-payers of said town of Lyons never consented to the bonding of the said town in any such way; that the consent which they gave was to the bonding of said town by bonds to be issued payable in thirty years, with interest payable semi-annually; whereas the bonds were issued payable in from twenty to thirty years, under another statute, which was not in force when the tax-payers signed their assent.

His Honor, the Judge, overruled said objection, and to which ruling and decision the counsel for the defendant then and there excepted.

(See Record, page 71).

THIRTEENTH EXCEPTION.

The counsel for the defendant then and there also objected to the reading of the said several alleged coupons in evidence, because the execution thereof had not been proved.

His Honor, the Judge, overruled said objection, and to which ruling and decision the counsel for said defendant then and there excepted. (Page 71).

FOURTEENTH EXCEPTION.

The counsel for the defendant then and there also objected to the reading of the said several alleged coupons, which first became due on each of said bonds, that is to say, those that fell due October first, 1872, in evidence, on the ground that each of them was made for $35, which is a half year's interest upon one of said bonds, each bond being for $1,000, and each bond bearing date the 17th day of May, 1872, and each of said last mentioned coupons being the amount of interest on the said bonds for six months, being two months and fourteen days more than the time said coupons had to run, and the counsel for the defendant insisted that each of said last mentioned coupons was excessive in amount and wholly unauthorized by the statute.

His Honor, the Judge, overruled said objection, and to which ruling and decision the counsel for the defendant then and there excepted.

(See Record, page 71).

FIFTEENTH EXCEPTION.

The counsel for the plaintiff disclaimed the right to recover upon said last mentioned coupons anything more than the interest upon said bonds from their date to the 1st day of October, 1872.

His Honor, the Judge, then and there ruled and decided that the plaintiff had a right to recover upon said last mentioned coupons the interest upon said bonds from their date to the time when they (*i. e.* said coupons) were made payable; to which ruling and decision the counsel for the defendant then and there excepted.

The said several objections to the reading of the said several alleged coupons in evidence having been overruled, and exceptions having been taken as aforesaid, said coupons were read in evidence by the plaintiff's counsel.

The said several coupons were all alike, except as to the time of their payment and the number of the bonds from which they were detached; and a copy of one of them has been before given.

The counsel for the plaintiff then called the said plaintiff, Edgar Munson, as a witness in his own behalf, who, being duly sworn, testified as follows:

"I am one of the directors of the Sodus Bay and Corning Railroad Company, and have been ever since its first organization. I have with me the book of records of the proceedings of said company. This is it." (The witness produced the record).

SIXTEENTH EXCEPTION.

The plaintiff's counsel then offered to read in evidence a resolution of the Board of Directors of the Sodus Bay, Corning and New York Railroad Company, passed at a meeting of said directors on the 11th day of November, 1870, which is in the words following, to wit:

"On motion of Mr. Munson, the following resolution was adopted:

"*Resolved*, That the terminus of the Sodus Bay, Corning and New York Railroad Company be, and the same hereby is, fixed at Nicholas Point, on said bay."

The counsel for the defendant then and there duly objected to the reading of said resolution in evidence on each of the following grounds, to wit:

First. That said evidence is wholly immaterial.

Second. That said resolution does not prove a location of the terminus of said railroad, because there can be no location of said railroad made by a mere resolution of the board of directors of said company; that in order to effect such location, said board of directors must cause to be made and filed in the office of the clerk of the county in which such railroad is to be located a map and profile of such railroad, determining and fixing the location of said railroad in said county.

His Honor, the Judge, overruled said objection, to which ruling and decision the counsel for the defendant then and there excepted.

The plaintiff then proved that Nicholas Point mentioned in said resolution was in fact on Sodus Bay; and also proved the interest and principal of said coupons ac-

cording to the ruling aforesaid, to be fourteen thousand forty-two dollars and ninety-four cents, including the amount claimed to be due on said coupons which fell due on the first day of October, 1872; of which sum three thousand nine hundred and seventy-three dollars and twenty cents was the amount claimed to be due on account of said last mentioned coupons.

The plaintiff here rested his case.

(See Record, page 72).

The defendant's counsel then produced and proved the execution and delivery of certain articles of agreement made by and between the said David F. Cole, William D. Perrine, and Dwight S. Chamberlain, commissioners of said town of Lyons, and the said Sodus Bay and Corning Railroad Company, by D. W. Parshall, its agent, on the 17th day of May, 1872; which said articles of agreement are in the words and figures following, to wit:

"Articles of agreement, made this 17th day of May, 1872, between David F. Cole, William D. Perrine, and Dwight S. Chamberlain, commissioners duly appointed by the County Judge of the county of Wayne, for the purpose of creating and issuing the bonds of the town of Lyons, of said county, to the amount of one hundred and fifty thousand dollars, in aid of the Sodus Bay and Corning Railroad Company, under chapter 907 of the laws of 1869, as amended, parties of the first part, and the Sodus Bay and Corning Railroad Company, by D. W. Parshall, authorized agent, of the second part, witnesseth:

"The party of the first part hereby agrees to execute and create the said bonds of the said town of Lyons to the amount of one hundred and thirty-five thousand dollars, and deliver the same to the said DeWitt Parshall, in trust, as hereinafter expressed, in exchange for an equal amount of stock of said company. Said bonds, or the proceeds of said bonds, to be expended in the construction of said railroad, on the following conditions and agreement:

"Said company shall construct and complete its railroad through the village and town of Lyons to Nicholas Point, on Great Sodus Bay. Said bonds, or the proceeds of said bonds, shall be first used to buy the right of way and the necessary ground for the use of said railroad

through the county of Wayne, for the purpose of grading the road-bed and preparing the same for the ties, including masonry and bridging, and in purchasing and laying down the ties ready for the iron, through the county of Wayne.

"Said Parshall is to hold said bonds, or the proceeds thereof, in trust, and shall pay over to said company said bonds, or the proceeds of said bonds, as fast as the above mentioned work shall progress, and shall not be required to pay the same faster than the progress of said work will justify.

"The parties of the second part hereby agree with the party of the first part that, in consideration of the delivery of the said one hundred and thirty-five thousand dollars bonds of the said town of Lyons to DeWitt Parshall, trustee as aforesaid, they will issue one hundred and thirty-five thousand dollars in the stock of the same railroad, and deliver the same to the party of the first part, and will construct and complete said railroad through the village and town of Lyons to Nicholas Point, on Great Sodus Bay, as soon and as fast as the same can reasonably be done; and the said bonds, or the proceeds of said bonds, shall first be expended as hereinbefore expressed; that said Parshall shall not be required to advance the same faster than the progress of the work will justify.

"This contract is made and executed under and in accordance with chapter 507 of the laws of 1870.

"In witness whereof the parties hereunto have affixed their hands the day and year above written.

DAVID F. COLE,
W. D. PERRINE,
D. S. CHAMBERLAIN,
Commissioners for the Town of Lyons.

SODUS BAY AND CORNING RAILROAD COMPANY,
By D. W. Parshall, Agent.

"Authorized by resolution of Board, May 16, 1872."

The counsel for the said defendant then read said agreement in evidence.

Counsel for the said defendant then called the said plaintiff, Edgar Munson, as a witness, who, being duly sworn, testified as follows:

"I was present at a meeting of the directors of the Sodus Bay and Corning Railroad Company on the 16th day of May, 1872, when a resolution was passed by the board

of directors of said company, which I have before me in the book of minutes of said company."

"On motion of Mr. Munson, seconded by Mr. Shepard,

"Resolved, That Mr. Parshall be, and hereby is, authorized to enter into an agreement with the commissioners of the town of Lyons as to the terms upon which the bonds of said town shall be delivered to this company, and upon such terms as he shall deem right.

"All present voted in the affirmative."

The witness, Munson, testified that the last above mentioned resolution was passed on the 16th day of May, 1872.

The counsel for the said defendant then and there also read in evidence, from the said book of minutes of said Sodus Bay and Corning Railroad Company, another resolution, dated the 17th day of December, 1872, in the words and figures following, to wit:

"Resolved, That the agreement made by DeWitt Parshall on behalf of this company on the 17th day of May, 1872, with the commissioners of the town of Lyons, for the issue of the bonds of that town, be approved and ratified.

"All present voting in the affirmative."

The witness, Edgar Munson, further testified as follows:

"I think I was present at the meeting of the board of directors of the Sodus Bay and Corning Railroad Company on the 17th day of December, 1872, when the resolution last read in evidence was passed. I think the contract referred to in said resolution was produced at that meeting.

"I reside at Williamsport, in the State of Pennsylvania. I purchased the coupons, on which this action is brought, after they became due and payable, and in the month of January or February, 1874. I purchased them of Mr. DeWitt Parshall. I gave him my note for twelve thousand dollars for them. I think the note was made payable in one year from its date. I did not purchase the bonds, nor any of them, nor do I claim to own the bonds, nor any of the coupons, except those upon which this action is brought. The coupons which I purchased were

detached from the bonds when I purchased them. Mr. Parshall was then one of the directors of the Sodus Bay and Corning Railroad Company, and I was the president of said company, and have been ever since, and still am such president. I knew at the time I purchased these coupons that the coupons which fell due on the first day of October, 1872, were given for interest prior to the date of said bonds; that is to say, I knew that the bonds were dated subsequent to the first day of April, 1872, and I knew or supposed that I could only recover on said coupons the interest on said bonds from their date to the first day of October, 1872.

"I knew, generally, that there was litigation about these bonds when I purchased these coupons; and I also knew of the trust-agreement, which has been introduced in evidence, between the commissioners and the railroad company, by DeWitt Parshall, agent. I purchased these coupons under these circumstances, because I considered them perfectly good, although I knew that the town was litigating about them. I took my chances on them. I cannot say that I knew at the time that a bill in equity had been filed to compel the surrender and cancellation of the bonds. I know it now. I knew that the town had appeared by counsel before the board of supervisors to oppose the levying of a tax to pay the interest on the bonds, and generally that there was a litigation about the bonds."

EIGHTEENTH EXCEPTION.

His Honor, the Judge, then and there ruled and decided that the denial in the defendant's answer put in issue nothing but the formal execution of the bonds and the formal appointment of the commissioners. To which ruling and decision the counsel for the defendant then and there excepted.

NINETEENTH EXCEPTION

His Honor, the Judge, then and there also ruled and decided that the said defendant could not avail itself of

any defence arising under the trust-agreement, between the said commissioners and the said railroad company, dated May 17th, 1872. To which ruling and decision the counsel for the defendant then and there duly excepted.

TWENTIETH EXCPTION.

The counsel for the defendant then and there requested the said court to rule and decide that upon the facts above proved, the plaintiff was not entitled to recover, and to direct a verdict for the defendant, but His Honor, the Judge, declined so to rule or decide, and declined so to direct a verdict for the defendant, but, on the contrary thereof, ruled and decided that, on the facts above proved, the plaintiff was entitled to recover, and to which ruling and decision the counsel for said defendant then and there duly excepted.

TWENTY-FIRST EXCEPTION.

His Honor, the Judge, then charged the jury that the plaintiff, on the above proofs, was entitled to recover of the defendant the sum of fourteen thousand and forty-two dollars and ninety-four cents, and directed said jury to find that sum for the plaintiff, and to which charge and direction the counsel for the defendant then and there duly excepted.

The jury then, under the direction of the court as aforesaid, and without retiring from said court, found their verdict for the plaintiff for the sum of fourteen thousand forty-two dollars and ninety-four cents.

(See Record, pages 72–75).

The Judge having directed a verdict as aforesaid, reserved the case for further consideration, and after hearing the arguments of counsel for the respective parties, ordered that judgment be entered on the verdict.

(See Record, pages 57, 58).

A bill of exceptions was prepared and signed by the Judge, embracing the facts and exceptions above stated.

Judgment having been entered upon the verdict, a writ of error was issued out of this court, with a bond for supersedeas, to review said judgment.

(See Record, pages 81–83).

ASSIGNMENT OF ERRORS.

And now comes the said town of Lyons, plaintiff in error, by H. L. Comstock, its attorney, before the Justices of the Supreme Court of the United States, at the Capitol in the city of Washington, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit:

First. That his Honor, the Judge, overruled the several objections made by the counsel for the said defendant, the town of Lyons, to the reading in evidence of the said judgment-roll, or judgment of the County Judge of Wayne county, and admitted the same in evidence, notwithstanding said several objections, the said judgment-roll or judgment being void; therefore, in this there is manifest error:

Second. That his Honor, the Judge, overruled the several objections made by the defendant's counsel to the reading in evidence of the said alleged bonds hereinbefore referred to, and received the same in evidence, the said bonds having been issued without lawful authority and being void; therefore, in that there is manifest error:

Third. That his Honor, the Judge, overruled the several objections made by the counsel for the said defendant, the town of Lyons, to the reading in evidence of the said alleged coupons, and admitted the same in evidence, notwithstanding said several objections thereto, said coupons having no validity; therefore, in that there is manifest error:

Fourth. That his Honor, the Judge, overruled the objection made by the counsel for the defendant, the town of Lyons, to the reading in evidence of the said several alleged coupons, which first became due on each of said bonds, that is to say, those that fell due October first, 1872, and permitted the same to be read in evidence, not-

withstanding said objection, said last mentioned coupons being void; therefore in that there is manifest error:

Fifth. That his Honor, the Judge, ruled and decided that the plaintiff had a right to recover on said last mentioned coupons, to wit, those that fell due on the first day of October, 1872, the interest upon said bonds from their date to the time when they (*i. e.* said coupons) were made payable, said coupons being void; therefore, in that there is manifest error:

Sixth. That his Honor, the Judge, overruled the objection made by the defendant's counsel to the reading in evidence of the resolution of the board of directors of the Sodus Bay, Corning and New York Railroad Company of the 11th day of November, 1870, in relation to the location of the terminus of the railroad of said company at Nicholas Point, and admitted said resolution in evidence, said resolution not proving, or tending to prove such location; therefore, in that there is manifest error:

Seventh. That his Honor, the Judge, ruled and decided that the denial in the defendant's answer put in issue nothing but the formal execution of the bonds aforesaid and the formal appointment of the commissioners aforesaid; whereas said denial in said answer put in issue the power of the said commissioners to issue said bonds, the delivery of said bonds, and every fact necessary to give said bonds and coupons a legal inception, as well as the power and authority to place them in the hands of DeWitt Parshall, as trustee, as provided in the aforesaid trust-agreement: therefore, in that there is manifest error:

Eighth. That his Honor, the Judge, ruled and decided that the defendant could not avail itself of any defence arising under the aforesaid trust-agreement between the said alleged commissioners and said railroad company, dated May 17th, 1872, said plaintiff having proved that said bonds and coupons were delivered to said Parshall by said commissioners under and pursuant to said agreement; therefore, in that there is manifest error:

Ninth. That his Honor, the Judge, refused to rule and

decide that upon the facts proved in the case, the plaintiff was not entitled to recover, and to direct a verdict for the defendant, as requested by the defendant's counsel, but, on the contrary thereof, ruled and decided that on the facts proved, the plaintiff was entitled to recover; whereas the plaintiff was not entitled to recover; therefore, in that there is manifest error:

Tenth. That his Honor, the Judge, charged the jury that the plaintiff, on the proofs in the case, was entitled to recover of the defendant the sum of fourteen thousand forty-two dollars and ninety-four cents, and directed said jury to find that sum for the plaintiff; therefore, in that there is manifest error.

And the said town of Lyons, prays that the judgment aforesaid for the errors aforesaid and other errors in the record and proceeedings aforesaid may be reversed, annulled and altogether held for nothing, and that it may be restored to all things which it hath lost by occasion of the said judgment, &c.

H. L. COMSTOCK,
Attorney and of Counsel
for Plaintiff in Error.

POINTS.

I.

The petition of the tax-payers of the town of Lyons to the County Judge of Wayne county was not drawn in conformity with the statute authorizing proceedings for the bonding of municipal corporations, and therefore it did not confer jurisdiction upon the County Judge to entertain such proceedings, nor to render any judgment therein.

1. The petition was presented to, and acted upon by, the County Judge on the 6th day of February, 1871.

2. At that time, the act of 1869 (chap. 907 of the laws of that year), was the only statute authorizing such proceedings, the act of 1871 (chap. 925 of the laws of that year), not having become a law till the 12th day of May, 1871.

3. The petition contains a condition in these words: "provided that the terminus of said road is made at Nicholas Point on Sodus Bay, in the town of Huron."

4. This condition was unauthorized by the statute, and it rendered the petition void.

Butternuts & Oxford Turnpike Co. v. North, 1 Hill, 518;
Fort Edwards, &c., Plank Road Co. v. Payne, 15 N. Y., 587;
Indiana N. & S. R. R. Co. v. City of Attica, 4 Am. L. T. R., N. S., 377;
The People v. The Adirondack Co., 57 Barb., 656;
Same case, on appeal, not reported;
Troy, &c., Railroad Co. v. Tibbets, 18 Barb., 297.

In *Butternuts, &c., Turnpike Co.* v. *North*, (1 Hill, 518), it was held that the general turnpike act conferred no power on the commissioners to receive *conditional* subscriptions for stock; and that a subscription conditioned that the road should be laid through a specified place, is contrary to public policy, and void. COWEN, J., said: "Subscriptions for stock under the turnpike act, (1 R. S., 581, 2d Ed.), to which the plaintiffs were subject (Sess. L. of 1834, p. 137), must be absolute. This act confers no power to make conditions; and to allow such a thing,

would be contrary to public policy. Divers men would perhaps have their diverse routes, and endeavor improperly to influence the course of the road. If the general subscription should contain a condition of this kind there would be no stockholders till the road should be laid out accordingly; and separate subscriptions containing various conditions, might work a fraud upon those who subscribed absolutely."

In *Fort Edward & Fort Miller Plank Road Co.* v. *Payne*, (15 N. Y., 583), the same thing was held in respect to a subscription to the stock of a plank road company.

In the *Troy & Boston Railroad Co.* v. *Tibbits*, (18 Barb., 297), the same principle was applied to a subscription to the stock of a railroad company.

In *The People* v. *The Adirondack Co.*, (57 Barb., 656), POTTER, J., cited these cases, and seemed to regard them, or the principle involved in them, as applicable to a petition to bond a town. In the same case, in the Court of Appeals, ALLEN, J., expressed some doubt whether such a condition in a subscription for stock might not be rejected as surplussage, refraining, however, from deciding the point; but the court did decide that the condition, or qualifying clause in the petition in that case, rendered the petition void; and that it could not be rejected as surplussage. Speaking of the petition, the learned Judge said: "It is the initial, jurisdictional proceeding, having for its object the creation of a debt and a pledge of the property of others for its payment. It must conform to the statute. If it is in a form not warranted, or subject to any condition not authorized by the statute, it is simply void, and the officer acquires no jurisdiction under it."

In a recent case in Indiana, (*Indiana North and South Railroad Co.* v. *City of Attica*, 4 Am. L. T. R. N. S., 377), the question arose in a bonding case in which the petition contained this clause, viz.: "The donation to be made upon the consideration that said railway company shall permanently locate and maintain their shops for the manufacture of their rolling stock in or adjacent to the city of Attica, and on failure so to do, said company are to reim-

burse said city in the sum of sixty thousand dollars." It was held that this condition, or provision, in the petition vitiated the whole proceeding. HOWK, J., after referring to the statutes of the State, and observing upon the vicious character of such a provision in a petition of this kind, said: "In any view of the case, the petition of the resident free-holders to the common council of the city of Attica was not, in our opinion, a legal petition under the provisions of said act of May 4th, 1869, hereinbefore cited. It contained a direction and restriction on the action of said common council, in connection with the subject matter of said petition, which are not to be found among the 'limitations, direction, and restriction named in the provisos to the sixteenth section' of the general law for the incorporation of cities, and which were therefore not authorized by law. It was not competent for appellee's common council to disregard the consideration clause of said petition, or to reject it as mere surplussage. However unauthorized by law this clause was, yet it was *a material part of the petition as presented;* and it can be readily seen, that this clause was the means used, the inducement held out, for the purpose of obtaining the signatures of the resident freeholders of the city of Attica to said petition. The clause in question was not warranted by law, and, in our opinion, it vitiated and rendered illegal the entire petition. It was impossible for the common council to overlook this clause. Although illegal, it could not be treated or considered as a mere nullity; for, evidently, it was the consideration and the real foundation of the petition."

The act of 1869 did not authorize the petitioners to insert any condition in their petition. The act of 1871, which provided that "The petition authorized by this section may be absolute or conditional," did not remedy the defect; for it was not enacted until after this proceeding was commenced, and the proofs partly taken. It is, however, a very significant legislative construction of the act of 1869, to the effect that it did not authorize a conditional petition. The articles of association of the rail-

road company provide that, "The places from and to which said railroad is to be constructed, maintained and operated, are as follows: commencing at or near the village of Corning, on the New York and Erie Railway, in the county of Steuben, and State of New York, thence by the most direct and feasible route, via Savona, Bradford, Penn Yan, Geneva and Lyons, and terminating on Great Sodus Bay, in the county of Wayne, in the State of New York." (See Record, page 66).

These articles of association do not fix the northern terminus of the road at *Nicholas Point*. They leave it to the directors of the company to fix such terminus at *any* point on Great Sodus Bay. As Great Sodus Bay is very large, the terminus of the road might be fixed, consistently with the articles of association, many miles away from Nicholas Point. The petitioners have undertaken to control the discretion of the directors of the company in relation to this matter. This they had no right to do.

But what interest had the tax-payers of the town of Lyons in the location of the northern terminus of this railroad, miles away from the town of Lyons and in another town? None whatever, unless some of them owned some land at or near Nicholas Point, the value of which it might be supposed would be increased if the road were located there. There can be little doubt that this condition was inserted in the petition for the purpose of securing signatures of some one or more persons in the town of Lyons who were particularly interested in Nicholas Point, or in property located there. There was some motive for inserting in this petition this condition, and it is difficult to conceive of any other motive than the one above indicated.

5. The petition contains another qualifying clause, in these words, to wit: "It is understood that the stock, so to be taken (*i. e.* the stock of the railroad company to be taken in exchange for the municipal bonds, or their proceeds), *is to embrace and include the stock now already subscribed and taken by persons residing in the town of Lyons, amounting to the sum of sixteen thousand and four hundred dollars.*"

6. This clause is wholly unauthorized, and it is a violation of the statute.

There is no authority, either in the act of 1869, or in the act of 1871, or in any other statute, for inserting such a provision in a bonding petition; but it is a direct and palpable violation of the letter and spirit of the act authorizing such proceedings. The object of the statute, as expressed in its title, is, "to permit municipal corporations to aid in the construction of railroads:" and not to enable municipal corporations to speculate in railroad stocks, nor to release stockholders in the company from their subscriptions. The commissioners have no authority to invest the municipal bonds, or their proceeds, in the purchase of stock of the railroad company owned by private individuals. The petitioners have no power to direct such an application of the bonds, or their proceeds.

By section five of the act of 1869, the commissioners are "empowered and directed to subscribe, in the name of the municipal corporation which they represent, to the stock or bonds of the railroad company named in the petition (as the petition may direct), to an amount equal to the amount of the bonds so created by them, and to pay for the same by exchanging the said bonds therefor at par; or they may, *at their discretion*, sell and dispose of said municipal corporation bonds so created by them, at rates not less than par, and invest the proceeds thereof in such stock or bonds of such railroad company, as may be directed in said petition."

This is the only authority the commissioners have for disposing of the municipal bonds. They are directed *to subscribe for the stock of the railroad company to an amount equal to the amount of the bonds created by them*, and to pay for such stock by such bonds, or their proceeds. They have no power to purchase stock of anybody but the railroad company. The clause in section five of the act of 1869, "or they may, at their discretion, sell and dispose of said municipal corporation bonds so created by them, at rates not less than par, and invest the proceeds thereof in such stock or bonds of such railroad company, as may

be directed in said petition," only authorizes the investment of the proceeds of the bonds in the stock or bonds of the railroad company subscribed for by the commissioners pursuant to the direction contained in the former part of the section. The words, "such stock or bonds of such railroad company," refer to the stock or bonds subscribed for by the commissioners, according to such direction. Any other construction would render the bonding act unconstitutional and void; for it would authorize the issue of bonds for a private and not for a public purpose.

It is clearly the policy of the law, that the municipal bonds, or their proceeds, shall be used only to aid in the construction of the railroad. Any other use of them is not only forbidden, but made a misdemeanor by section seven of the act of 1869.

This is enough to show that the petitioners have prayed for the creation and issue of bonds to the amount of $16,400 for a purpose not authorized, but prohibited, by the statute.

7. The clause in question is positively vicious, for the following reasons:

(*a*) It directs the application of a part of the bonds, or their proceeds, for a *private*, not a public purpose.

Loan Association v. Topeka, 20 Wall., 655;
Allen v. Inhabitants of Jay, 60 Maine, 124;
Weismer v. The Village of Douglass, 4 Hun, 201;
Same case, on appeal, 64 N. Y., 91;
Lowell v. City of Boston, 111 Mass., 454;
Commercial Bank v. Iola, 2 Dillon, 358;
Bissell v. Kankakee, 64 Ill., 249;
Curtis v. Whipple, 24 Wis., 350.

The constitutionality of the bonding act can be sustained only on the ground that it is a legitimate exercise of the taxing power. I am not aware that any court has

ever undertaken to sustain such legislation upon any other theory. It has been often held that the taxing power can be exercised only for a public purpose, (*Alcott* v. *The Board of Supervisors*, 16 Wall., 678; *Sharpless* v. *Mayor of Philadelphia*, 21 Penn. St., 147; *The People* v. *Batchellor*, 53 N. Y., 128; *Clark* v. *The City of Rochester*, 24 Barb., 446).

What public benefit can result from the purchase of railroad stock owned by private individuals? It would not aid in the construction or equipment of the railroad, and consequently it cannot promote any public improvement. It would be either a mere matter of speculation on the part of the town, or else it would be a mere benefit to private individuals, resulting in encumbering the taxable property of the town. In neither view would it be a legitimate exercise of the taxing power. In either view it would be a clear violation of the rights secured to the citizens by the constitution. If the legislature had undertaken to authorize such an application of the municipal bonds, the act would have been unconstitutional and void, as the cases above cited clearly show.

If the legislature could not authorize such an exercise of the taxing power *a fortiorari* the petitioners could not direct such an application of the bonds, which the legislature has authorized to be issued for another and an entrely different purpose. The petitioning tax-payers might just as well have provided for the payment of their grocery bills by the bonds to be issued, or the proceeds of their sale. Such a provision in the petition would be no more foreign to the objects of the bonding act, and no more vicious in its character, than the one actually inserted.

(*b*) The clause in question was a direct inducement, in the nature of a bribe, held out to these stockholders, to sign the petition. The persons who got up this petition appear to have known that persons residing in the town of Lyons had subscribed for the stock of the railroad company to the amount of $16,400. These persons were undoubtedly tax-payers, and probably the largest tax-pay-

ers in the town. The object of this clause was to make it for their interest to sign the petition, and so make sure of their signatures to it.

(*c*) The persons who were instrumental in procuring signatures to the petition had no right to hold out such an inducement to these persons, much less to insert such a provision *in the petition itself.*

McGuire v. Smock, 42 Ind., 1;
Howard v. First Independent Church, &c., 18 Md., 451;
Ex parte Selma, &c., Railroad Co., 46 Ala., 230;
Garrigues v. Commissioners, 39 Ind., 66;
Supervisors of Fulton Co. v. Mississippi, &c., R. R. Co., 21 Ill., 338;
Indiana Northern, &c., R. R. Co. v. City of Attica, 4 Am. L. T. R., N. S., 377.

In *McGuire* v. *Smock* (*supra*), it appeared that some of the abuttors on a street, in order to secure the requisite number of signatures to a petition for the improvement of the street, agreed to pay a part of the sum assessed to other abuttors, provided they would sign the petition. In an action on the agreement, it was held that it was against public policy, and void.

In *Howard* v. *The First Independent Church of Baltimore*, (18 Md., 451), it was held that, under the ordinances for grading and paving the streets of Baltimore, an application by the abuttors must be made in good faith, all the subscribers actually bearing their proportion of the burden; and that any agreement, whereby, for a direct or indirect consideration, some of the subscribers are induced to affix their names, is contrary to public policy, and is *a fraud on the law.* The Court uses this language: "Any agreement or combination among the parties applying, whereby a few individuals, desirous of causing the grading and paving to be done, procured the signatures of others to the application by paying them a consideration

therefor, either directly or indirectly, *is a fraud on the law, and contrary to public policy.*"

In this case this corrupt agreement is inserted in the petition itself. The *petition* is a fraud on the law. It provides for a misapplication of a part of the bonds to be issued to a private purpose, not authorized by any law, and which, if it had been authorized by the law, would have rendered the law itself void.

8. The clause in question vitiated the whole petition, and rendered the whole proceeding void.

The People v. Adirondack Co. (in Court of Appeals);
Ex parte Selma, &c., R. R. Co., 46 Ala., 330;
Garrigues v. Commissioners, 39 Ind., 66;
Supervisors of Fulton Co. v. Mississippi, &c., R. R. Co., 21 Ill., 338;
Indiana North., &c., R. R. Co. v. City of Attica, 4 Am. L. T. R. N. S., 377.

In *The People* v. *Adirondack Co.*, ALLEN, J., said: "The courts cannot declare any substantial part of the application surplussage, and disregard it; but the whole must be read together; and if, so read, it is an application within the statute, the officer acquires jurisdiction; otherwise not." This case, in the Court of Appeals, is not reported. It is, however, referred to by Judge WALLACE, in his opinion, and the quotations I have made will not be disputed. The opinion accords with that in the recent case in Indiana from which I have quoted.

The rule laid down in these cases is peculiarly applicable to this case; for the petitioners have not consented that a part only of their application may be granted, and another part refused; much less have they consented that bonds to the amount of $150,000 should be created and issued to aid in the construction of the railroad.

In the Alabama bonding act, the Court of County Commissioners, on receiving a written proposal of a railroad

company, made in accordance with its provisions, was authorized to order that such proposal be submitted to the qualified electors of the county. If such election resulted in favor of subscription, the court might subscribe to the stock of the railroad company, and issue bonds of the county in payment therefor.

In *Ex parte Selma &c. R. R. Co.*, (46 Ala., 230), the proposal of the railroad company, in addition to what the statute authorized, included a proposal, on the part of the railroad company, to build a passenger and wagon bridge, in connection with the railroad bridge, across a river. It was held that the Court of County Commissioners had *no authority to submit the proposition to the electors;* that the statute authorized a county to vote a subscription to the capital stock of a railroad company for the purpose of building a railroad and nothing else: that the whole proceeding was void: and that a mandamus would not lie to compel the issuing of the bonds. This is a well considered case, and I invite attention to it.

Garrigues v. *Commissioners*, (39 Ind., 66), arose under the Indiana statute of 1869, authorizing aid to the construction of railroads by counties. It was held not to be legal for the commissioners of the county to submit to its voters a proposition to vote for or against an appropriation to two or more railroad companies at the same time, when the proposition is so submitted that the voters cannot vote for or against either alone, but must vote for both or against both. This case was decided upon the authority of several Illinois cases to the same effect.

The County Judge seems to have treated the clause in the petition now under consideration as surplussage. He took no notice of it in the judgment which he rendered. The judgment recites, among other things, that the petitioners set forth in their petition, "that they desire that such town shall create and issue its bonds to the amount of one hundred and fifty thousand dollars, and invest the same, or the proceeds of the same, in the stock of the Sodus Bay, Corning and New York Railroad Company," omitting to make any reference to the clause in question,

or to the condition before referred to. This recital is not true, and the record proves it to be untrue. The petition is a part of the record. That shows that the petitioners never addressed any such petition to the County Judge as that recited in the judgment.

If the town is bonded at all, it is bonded in the sum of $150,000, in aid of the construction of the railroad. But that is not what the petitioners prayed for. They never consented to any such judgment; nor to the issuing of bonds to the amount of $150,000 for any such purpose. They did not consent that the town should create and issue its bonds to this amount, and that the same, or the proceeds thereof, should be invested in the stock of the railroad company *in the manner provided by the statute*; but they consented and prayed, that the town should create and issue its bonds, to the amount of $150,000, and that, of this amount, $133,600, should be invested in the stock of the railroad company, as the statute requires, and that $16,400 of said amount should be invested in the stock of said company then "already subscribed and taken by persons residing in the town of Lyons."

It may be claimed that, though the petition be bad as to the $16,400, it is good as to the $133,600. But this position cannot be sustained. The petitioners have not consented to the issuing of bonds to the amount of $133,600 without the issuing of those for $16,400 at the same time, *and their application to the illegal purpose specified.* Hence the petitioners have not given the consent required by the statute even in respect to the $133,600; and therefore they have not complied with the statute at all. Their consent is *one entire thing*, and it must stand or fall as an *entirety.* This defect is not in respect to a mere matter of form. It is a radical defect in substance.

Suppose the petitioners had provided in the petition that the whole of the municipal bonds, or their proceeds, should be invested in the stock of this railroad company then already subscribed and taken by private individuals: would there have been any doubt that the petition was void? Suppose half of the bonds were directed to be

applied in this way: would there have been any doubt about the invalidity of the petition? Does it matter what the proportion is between the bonds directed to be applied according to law and those directed to be applied in violation of law, so long as the amount directed to be applied in violation of law is considerable, and the only consent of the tax-payers is that both sums shall be raised and applied as directed?

9. The petitioners must give the consent required by the statute; for the jurisdiction of the County Judge to exercise the authority conferred by the statute, depends on the presentation to him, in the first instance, of a petition drawn in conformity to the act.

The People v. Smith, 55 N. Y., 135;
The People v. Spencer, ibid, 1;
The People v. Smith, 45 N. Y., 772;
The People v. Hughitt, 5 Lans., 89.

In *The People* v. *Smith*, (45 N. Y., 772), ALLEN, J., said: "A petition of the tax-payers, desiring the creation and issue of the municipal bonds in aid of the construction of the railroad named is essential to the jurisdiction of the County Judge. Without such a petition, he is without jurisdiction, and his acts and proceedings are *nullities*."

A majority of the tax-payers of the town, owning a majority of the taxable property, must first exercise the power conferred upon them, in the manner pointed out by the act, before the County Judge has any power at all. The petition of the tax-payers must conform to the requirements of the statute, or the County Judge will acquire no jurisdiction. In *The People* v. *Spencer*, (55 N. Y., 1), ANDREWS, J., said: "The jurisdiction of the County Judge to exercise the authority conferred by the act, under which the proceedings were instituted, ... depended upon the presentation to him, of a petition *in conformity with the act*." This doctrine was re-affirmed in

The People v. *Smith*, (55 N. Y., 135). The highest court in the State has so held from the beginning.

In this case, the petition is not drawn in conformity with the act: but it is drawn in violation of its express provisions and of its spirit and policy. The consent which the petitioning tax-payers are required to give is an *unqualified* consent to the creation and issue of the bonds *for the purpose specified in the statute.*

The form in which this consent, or desire, is required to be expressed does not admit of any condition, or qualification, as to the purpose to which the bonds, or their proceeds, shall be applied. The act of 1869 did not admit of any condition or qualification. It required that the petitioners should set forth in the petition certain facts, "and that they desire that such municipal corporation shall create and issue its bonds to an amount named in such petition, ... *and invest the same or the proceeds thereof in the stock or bonds* (as said petition may direct) *of such railroad company in this State as may be named in said petition.*" This language leaves no room for any condition or qualification as to the use which should be made of the municipal bonds. This is certainly so when this language is construed, as it must be, with sections five and seven of the same act.

The act of 1871 does not admit of any such condition or qualification as that in question. It provides that "The petition authorized by this section may be absolute or conditional;" but this does not mean that the petitioners may make any condition which is illegal, or which involves a misappropriation of the bonds to be issued.

II.

The proceeding before the County Judge, having been commenced under the general bonding act of 1869, and while it was in force, and before the act of May 12th, 1871, became a law, and remaining unfinished when the

latter act took effect, could not be completed under either act, but was completely arrested.

1. By section one of the act of 1869, it is provided that, "Whenever a majority of the tax-payers of any municipal corporation in this State, *whose names appear upon the last preceding tax-list or assessment-roll of said corporation, as owning or representing a majority of the taxable property in the corporate limits of such corporation*, shall make application to the County Judge of the county in which such corporation is situated, by petition, verified by one of the petitioners, *setting forth that they are such a majority of tax-payers* and represent such a majority of taxable property, and that they desire," &c., "it shall be the duty of the County Judge to order that notice shall be forthwith published in some newspaper in such county," &c.

2. Under this section, and while it was in force, it was held that all names of tax-payers on the tax-list *including those persons taxed only for dogs* must be counted in ascertaining the aggregate number of the tax-payers of the town; and also in ascertaining whether the petitioners were a majority in number of such tax-payers.

The People v. McMaster, 10 Abb. Pr., R. N. S., 132.

3. By section one of the act of 1871, it is provided that, "Whenever a majority of the tax-payers of any municipal corporation in this State, *who are taxed or assessed for property, not including those taxed for dogs or highway tax only*, upon the last preceding assessment-roll or tax-list of said corporation, *and who are assessed or taxed, or represent a majority of the taxable property upon said last assessment-roll or tax-list*, shall make application to the County Judge of the county in which such corporation is situated, by petition, verified by one of the petitioners, setting forth that they are such majority of tax-payers, and are taxed for or represent such majority of taxable property," &c.

4. Under this statute, it has been held by the Court of Appeals of the State that the petition of the tax-payers, in order to give the County Judge jurisdiction, must show that the petitioners are not only a majority of the tax-payers of the municipal corporation to which it relates, but that they are a majority, "not including those taxed for dogs or highway tax only."

The People v. Smith, 55 N. Y., 135.

5. The necessary effect of the amendment of section one of the act of 1869, by section one of the act of 1871, was to repeal section one of the act of 1869, or at least so much of it as was not merely copied, without change in the act of 1871.

Ely v. Holton, 15 N. Y., 595;
Moore v. Mausert, 5 Lans., 173;
Same case, on appeal, 49 N. Y., 332;
Bay v. Gage, 36 Barb., 447;
State v. Andrews, 20 Texas, 232;
State v. Ingersoll, 17 Wis., 631;
Goodno v. Oshkosh, 31 Wis., 127;
People v. Supervisors, 67 N. Y. 109;
Steamboat Co. v. The Collector, 18 Wall, 478;
Kelsey v. Kendall, 28 Vt., 24.

In *The State* v. *Ingersoll*, (*supra*), it was held that where a statute providing that a certain section of a former statute shall be "amended so as to read as follows," &c., any provision of such section not found in the new statute, is repealed.

The State v. *Andrews*, (*supra*), is a similar case relating to the jurisdiction of the Supreme Court in appeals from the district courts, and was decided in the same way.

Ely v. *Holton*, (15 N. Y., 595), is to the same effect. Speaking of this mode of amending statutes, DENIO, C. J., said: "The portion of the amended sections which are

merely copied, *without change*, are not to be considered as repealed and again enacted, but to have been the law all along; and the *new parts*, or the *changed portions*, are not to be taken to have been law at any time prior to the amended act."

Moore v. *Mansert*, (49 N. Y., 332), is a similar case; and the same doctrine was re-affirmed. GROVER, J., said: "In *Ely* v. *Holton*, (15 N. Y., 595), it was decided by this court, that the effect of the amendment of a statute, made by a subsequent statute, declaring that such statute shall be amended so as to read as follows, retaining a part of the statute amended, and incorporating therein new provisions, was not to repeal the part retained and re-enact the same, but that such part of the statute continued in force from the first enactment, and the new provisions incorporated became operative from the time the amended statute took effect. It would follow that, *where certain provisions of the original statute were omitted from the amendatory statute, such provisions were abrogated and ceased to form any part of the statute after such time.*"

6. Without regard to this particular form of the amendment, or mode of repeal, it is a well settled rule of law, that a subsequent statute, repugnant to a prior one, repeals such prior statute by necessary implication; and it is equally well settled that, though the subsequent statute be not repugnant, in all its provisions, to a prior one, yet, if the latter statute was intended as a substitute for the prior one, and was intended to prescribe the only rule which should govern in the case provided for, it repeals the original act as absolutely as if the repeal were expressly declared.

United States v. Tynen, 11 Wall., 88;
Norris v. Crocker, 13 How., 429;
Davies v. Fairbairn, 3 How., 636;
Murdock v. City of Memphis, 20 Wall., 590;
New London, &c., R. R. Co. v. Boston, &c., R. R. Co., 102 Mass., 386;
Phillips v. Pickford, 9 Man. Gr. & S., 459;

Jersey City v. Jersey City, &c., R. R. Co., 20 N. J. Eq., 360;
Warren v. Phillips, 36 Conn., 357;
Sacramento v. Bird, 15 Cal., 294;
Industrial School District v. Whitehead, 2 Beas. Ch., 291;
Gwinner v. Lehigh, &c., R. R. Co., 55 Penn. St., 126.

In *Gwinner* v. *Lehigh*, &c., *Railroad Co.* (55 Penn. St., 126), it was held that acts which, although in *pari materia*, grant a right conditioned on different things, are inconsistent, and the inconsistency operates as a repeal.

In *The United States* v. *Tynen*, (11 Wall., 88), it was held that where there are two acts of Congress, on the same subject, and the latter act covers the whole subject of the first, and embraces new provisions, and imposes different or additional penalties, the latter act operates, without any repealing clause, as a repeal of the first. FIELD, J., said: "Where there are two acts on the same subject, the rule is, to give effect to both if possible; but if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates, to the extent of the repugnancy, as a repeal of the first; and even where the two acts are not, in express terms, repugnant, yet, if the latter act covers the whole subject of the first and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act."

This is a clear and concise statement of the rule laid down in a great number of cases, and also in the elementary books. The authorities leave no room for doubt or dispute about this rule.

7. On comparing section one of the act of 1869 with section one of the act of 1871, it will appear that there is a clear repugnancy between the two, both as to the qualifications of the petitioners and the contents of the petition; and that the latter section covers the whole subject of the for-

mer, contains new provisions, and that it is expressly substituted in the place of the former section.

The law is changed in each of the following particulars:

First. A whole class of persons, viz.: "Those taxed for dogs or highway tax only," who might have been petitioners under the former act, are expressly excluded by the latter.

> The People v. McMaster, 10 Abb. Pr. R. N. S., 132;
> The People v Smith, 55 N. Y., 135.

It was quite impossible to exclude persons taxed for dogs only, under the act of 1869, and so it was held. By a statute of the State it was provided that a tax should be levied upon every owner of a dog, or who harbored one, of at least fifty cents. Some classes of dogs were taxed more, and if a person had more than one, he was liable to an additional and increased tax. The names of the persons who owned or harbored dogs were required to be inserted in the assessment-roll, and the tax levied thereon. (*Session Laws of New York* of 1862, chap. 244).

The owners of dogs were a numerous class, and many of them were not named on the assessment-roll as the owners of any other property. This numerous class of tax-payers was expressly excluded from the computation in a bonding proceeding under the act of 1871.

Second. Another whole class of persons, namely, the owners of non-resident lands, taxed as such, who could not have been petitioners, nor counted in ascertaining the aggregate number of tax-payers, under the act of 1869, are expressly made competent petitioners, and required to be counted as tax-payers, under the act of 1871.

Under the act of 1869, only tax-payers "*whose names appeared* on the last preceding tax-list or assessment-roll of said corporation," could be petitioners. This excluded the owners of non-resident lands; because their names would not, and could not lawfully, appear upon the tax-

list or assessment-roll, (*Buffalo and State Line Railroad Co.* v. *Supervisors of Erie county*, 48 N. Y., 101; *New York and Harlem Railroad Co.* v. *Lyon*, 16 Barb., 651; *The People* v. *Oliver*, 1 Sup. R., 570). To name the owners of non-resident lands on the tax-list rendered the assessment void. The owners are not liable *in personam*. The tax is only upon the land as such.

The policy of the act of 1869 was, to make the tax-list or assessment-roll the only evidence as to the number of tax-payers, and *who they were*. It could not be ascertained from the assessment roll or tax list who the owners of non-resident lands were, nor how many there were of them. To ascertain how many there were, and who they were, would require additional evidence outside of the tax-list or assessment-roll.

Under the act of 1871 (§ 1), the word "tax-payer," as used in that act, is defined to mean, among other things, "the owner of any non-resident lands, taxed as such." This is a very important change in the law. It admits a new class of petitioners, and it requires the County Judge, in ascertaining the aggregate number of tax-payers, to include this same class; and, in order to do this, the County Judge must take additional evidence to ascertain who these owners of non-resident lands are, and how many there are of them. They are often numerous, and on almost every assessment-roll, there are more or less non-resident lands described. The sweeping character of this change will be adverted to again. It is enough now to say that the act of 1871 admits this new class of petitioners, and requires that they should be taken into account in ascertaining the aggregate number of tax-payers of the town.

Third. Under the act of 1869, only corporations, "formed under the laws of this State," could be petitioners. Under the act of 1871, any corporation assessed in the town may be a petitioner. This let in national banks, which could not be petitioners before.

Fourth. Under the act of 1869, corporations could be petitioners only, "so far as property representation is con-

cerned." This did not permit corporations to be taken into the account in ascertaining the *number* of the petitioners. In the act of 1871, this qualification is omitted; and the consequence is, that corporations joining in the petition must be counted in determining the *number of the petitioners;* and whether they are petitioners or not they must be taken into account in determining the aggregate number of tax-payers.

Fifth. Under the act of 1869, there was no provision authorizing agents, executors, administrators, trustees, guardians or partnerships to become petitioners as such. Under the act of 1871, partnerships, agents, trustees, guardians, executors and administrators, as such, may be petitioners.

Under the act of 1869, and while it was in force, it was held that any person whose name appeared, as a tax-payer, on the assessment-roll, might be a petitioner, but that his name could be counted only once, though it appeared on the assessment-roll several times in different characters. It was also held, that partnerships, as such, could not become petitioners, though the individuals composing the firm might; and that if all of them joined in the petition, the partnership property would be represented; but that the members of the firm must be counted as individuals (*The People* v. *Franklin*, 5 Lans., 129). Under the act of 1871, if a man is assessed once individually, and again as an agent, trustee, guardian, executor and administrator, he may become a petitioner in each of these characters, and his name must be counted as many times as it appears upon the assessment-roll in these different characters. This also changes the computation as to the aggregate number of tax-payers.

Sixth. The act of 1871 contains the following provision, which is entirely new, viz.: "Any person, partnership, or corporation, upon whom it shall have been intended to levy a tax by virtue of said last assessment-list and tax-roll, *under whatever name*, and who have paid, or are liable to pay, such tax thus intended to be levied and assessed, shall be a tax-payer, entitled to represent the prop-

erty thus taxed, and, as such, entitled to all the rights and privileges of this act."

The evident design of this provision was to enable persons who are liable to assessment, but who had not been legally assessed, but who had paid the tax upon an attempted assessment, to become petitioners. It was probably also designed to allow assessments to estates of deceased persons to be represented on the petition, provided it could be shown that the assessment was intended to be made to the person or persons liable to assessment, and that such person or persons had recognized the validity of the tax by paying it. Such void assessments could not be represented on the petition under the act of 1869. (*The People* v. *Franklin*, 5 Lans., 129; *The People* v. *Hulburt*, 46 N. Y., 110).

This is a very important change in the law. It allows persons to be petitioners who could not be petitioners before. But this is not the only change wrought by this new provision. The consequence is, that the *tax-list*, and not the assessment-roll, must be resorted to as the basis of computation. In almost every case, under the act of 1871, the question whether some of the petitioners were competent, depended on the question whether they had paid the tax levied upon their property. This arose from mistakes and errors in the assessments. Such mistakes and errors are not infrequent. In such a case, if the mistake or error is such as to render the assessment void, the property assessed could not be represented on the petition unless the person liable to assessment, and who was intended to be assessed, had paid the tax. How can a tax be paid before it is levied? In order to prove that a tax had been paid, it would be necessary to produce the tax-list.

It is not to be supposed that the legislature intended that the County Judge should resort to one roll as the basis of computation, and then resort to another roll for the purpose of proving that the tax had been paid. The petitioner must be a qualified petitioner at the time of the presentation of the petition to the County Judge,

for the petition speaks as of that time. (*The People* v. *Sawyer*, 52 N. Y., 296). If a person has to pay a tax to enable him to become a petitioner, he must do so before the petition is presented to the County Judge: and this renders it absolutely necessary to resort to the last preceding tax-list in order to determine that he is qualified, and also in order to ascertain the aggregate number of tax-payers.

A consideration of the amendment allowing owners of non-resident lands, taxed as such, to become petitioners, leads to the same conclusion. It is provided by statute that, the board of supervisors shall make such alterations in the descriptions of the lands of non-residents as may be necessary to render such descriptions conformable to the statute: and if such alterations cannot be made, they shall expunge the descriptions of such lands and the assessments thereon from the assessment-roll (1 R. S., 395, § 32). In many cases where the descriptions are imperfect, it could not be known what non-resident lands were legally assessed until the supervisors had corrected the descriptions: and none of them could be *taxed as such* until they had levied the tax.

So far, then, as the owners of non-resident lands are concerned, it could not be determined who were qualified petitioners without the production of the tax-list. It is manifest, therefore, that the tax-list must be resorted to in every case, arising under the act of 1871, as the basis of computation. This is an important change in the law. There can be no doubt that either the assessment roll or tax-list might be used under the act of 1869, which ever happened to be last completed. (*The People* v. *Hughitt*, 5 Lans., 89).

Seventh. The act of 1871 has also wrought an important change in the contents of the petition: for the petition must now show, on its face, that the petitioners are a majority of the tax-payers "not including those taxed for dogs or highway tax only." This was not required, nor was it allowable, under the act of 1869.

The People v. Smith, 55 N. Y., 135;
The People v. McMaster, 10 Abb. Pr. R. N. S., 132.

Eighth. Under the act of 1869, the petition must be absolute. Under the act of 1871, it may be absolute or conditional.

Ninth. Under the act of 1869, the limitation of the amount for which bonds might be issued was a limitation only, in each particular case, and there was no limitation of the amount for which a municipal corporation might be bonded by successive applications in favor of different railroad companies. Under the act of 1871, the amount for which such municipal corporations might issue their bonds was limited to twenty per cent. of the taxable property in the aggregate; and this could not be exceeded by successive applications.

Tenth. The act of 1871 extends over more territory than the act of 1869,—three counties, lacking one town, being excluded from the operation of the act of 1869, as amended in 1870, which are not excepted in the act of 1871.

These changes are so important in their character, and so numerous, that it must be held that section one of the act of 1869 is repealed. I have pointed out six particulars in which the qualifications of the petitioners is changed, and shown that some of these changes are very sweeping. The contents of the petition are also changed. The basis of computation is changed, not only as to the number of petitioners but also as to the aggregate number of tax-payers, and the evidence also by which they are both to be determined. The facts to be adjudged by the County Judge are different, and are to be determined, to some extent, upon different evidence. Nothing is left to operate as it did before, except the provision for making the order for publication of notice on the first presentation of the petition to the County Judge. The prayer of the petition is expressed in the same words, but it is a prayer of a different class of petitioners. It is also a

prayer for a different thing, viz.: for bonds payable at different and shorter periods, in consequence of the amendment of another section of the statute.

These changes are not only numerous, but very important in their character, relating to the *facts*, to be alleged in the petition and determined by the County Judge, and the evidence upon which such determination is to be made.

If we put these two sections side by side, and strike out of section one of the act of 1869 all that is omitted or materially changed by section one of the act of 1871, we shall find that there is not enough left of the former section to confer any power at all, either upon the tax-payers, or the County Judge. There is not enough left to convey any sense or meaning. The very word "tax-payers" has a different meaning in the two sections; and this word must be stricken out of the act of 1869 with the *description* of the tax-payers who are authorized to make the application. Certainly the description of the tax-payers must be stricken out; for that is very materially changed. The word "tax-payers" is not used in an unqualified sense in either section. It must be taken with the qualifying description in both sections. It cannot stand alone, without the qualification, in either act. The legislature never intended that it should. The legislature did not intend to strike out the qualifying description, and leave the word "tax-payers" to be understood in an unqualified sense, in making the amendment of 1871; for the legislature still further qualified the meaning of that word by the amendment,—in some respects still further limiting its meaning, and in other respects enlarging its meaning.

But we must look not only at the words and clauses which are stricken out of the former section, or materially changed by the latter section, but also to the *new provisions* which are contained in section one of the act of 1871, and which change the effect of the whole section. If both these considerations are duly considered, it will be seen that there is nothing left of section one of the act

of 1869 sufficient to express a rational idea, or to constitute a complete sentence,—much less to confer any power. The more this subject is studied, the more certain does this conclusion become. A plainer case of repeal by implication cannot be found in all the books.

8. It is a well settled rule of law, that where jurisdiction or authority is conferred by a statute, the repeal of the statute arrests and puts an end to all proceedings under it, which are not fully completed, so that they can stand alone without the exercise of any further power under the repealed statute, unless there is a saving clause in the repealing act, excepting such pending proceedings from its operation.

Kay v. Goodwin, 4 Moore & Payne, 341;
Rex v. Justices, &c., of London, 3 Burr., 1,456;
Surtees v. Ellison, 9 Barn. & Cress., 750;
The Assessors v. Osbornes, 9 Wall., 565;
Regina v. Denton, 18 Q. B., N. S., 761;
Butler v. Palmer, 1 Hill, 324;
New London, &c., R. R. Co. v. Boston, &c., R. R. Co., 102 Mass., 586;
Illinois, &c., Canal v. Chicago, 14 Ill., 334;
Hampton v. Commonwealth, 19 Penn. St., 329;
Hunt v. Jennings, 5 Blackf., 195;
Insurance Company v. Ritchie, 5 Wall., 541;
McQuilkin v. Doe, 8 Blackf., 581;
Lewis v. Foster, 1 N. H., 61;
Stephens v. Doe, 8 Blackf., 508;
Pope v. Lewis, 4 Ala., 48;
Bailey v. Mason, 4 Minn., 546;
Road in Hatfield, 4 Yeates, 392;
North Canal St. Road, 10 Watts, 351;
Tiney v. The People, 8 Mich., 128;
Bay City, &c., R. R. Co. v. Austin, 21 Id., 390;
Veates v. Danbury, 37 Conn., 412;
Springfield v. Commissioners of Hampden, 6 Pick., 501.

In *Kay* v. *Goodwin*, (4 Moore & Payne, 341), Lord TINDAL, C. J., said, "I take the effect of a repealing statute to be, to obliterate it, (*i. e.*, the statute repealed) as completely from the records of parliament as if it had never passed, and that it must be considered as a law that never existed: except for the purpose of those actions or suits which are commenced, prosecuted, and *concluded*, whilst it was an existing law."

The question in that case was, whether a certain deposition was admissible in evidence to support a commission in bankruptcy. The deposition had been taken under a former statute, which had been repealed before the deposition was enrolled. The statute required that the deposition should be enrolled in order to make it admissible in evidence. It was in all other respects completed according to the statute. The court held that no right remained, after the repeal, to enroll the deposition, although the repealing act provided a like power of enrollment in proceedings under itself, and the deposition had been enrolled after the latter act took effect.

Surtees v. *Ellison*, (9 Barn. & Cress., 550), is a very strong case to the same effect. A new bankrupt law had been passed, by the first section of which all previous statutes of bankruptcy were repealed. By the last section, the new statute was not to take effect until September 1, 1825. There being no saving clause as to acts of bankruptcy committed, or any inchoate proceedings under the former act, it was held that the court had no power to imply a saving, although it was plain that by a mere inadvertence in legislation, the kingdom was left for a time without any bankrupt law. Lord TENTERDEN, C. J., said: "It has been long established that, where an act of parliament is repealed, it must be considered, (except as to transactions *passed and closed*), as if it had never existed. This is the general rule; and we must not destroy that by indulging in conjecture as to the intention of the legislature."

In *Regina* v. *Denton*, (18 Q. B., N. S., 771), COLERIDGE, J., said: "The proceedings are before the court, and are

at a stage when the question arises, whether a particular step can be justified. It can be justified only by an act of parliament; and that act has been repealed without any saving. Then, can the court, for the present purpose, take notice of the repealed act? The answer is that what has been done and *perfected*, cannot be disturbed; but if you want *assistance from the statute for a further purpose, as that of giving judgment, you cannot have it.*"

This rule is equally well settled in this country. In *Hunt* v. *Jennings*, (5 Blackf., 196), it was held that, where a statute, from which a court derives its jurisdiction in a particular case, is repealed, the court cannot proceed under the repealed statute, even in suits pending at the time of the repeal, unless they are saved by a clause in the repealing act.

In *The Assessors* v. *Osbornes*, (9 Wall, 567), it was held that, where jurisdiction depends wholly upon a statute, suits brought during the existence of the statute, fall with its repeal. CLIFFORD, J., said: "Jurisdiction in such cases, was conferred by an act of congress, and when that act of congress was repealed, the power to exercise such jurisdiction was withdrawn; and inasmuch as the repealing act contained no saving clause, all pending proceedings fell, as the jurisdiction depended entirely upon the act of congress."

It makes no difference, in this respect, whether the repeal is express, or by implication. In *Illinois, &c., Canal* v. *Chicago*, (14 Ill., 334), it was held that, if two statutes are clearly repugnant to each other, the one last enacted operates as a repeal of the former; that where a statute is repealed, it must be regarded, except as to transactions passed and *closed*, as if it had never existed; and that the repeal of a statute conferring jurisdiction, takes away all right to proceed under the repealed statute, even in suits pending at the time of the repeal, unless they are saved by a clause in the repealing statute. In that case, the repeal was by implication only.

New London, &c., Railroad Co. v. *Boston, &c., Railroad Co.*, (102 Mass., 386), is to the same effect. The repeal

was by implication. It was contended that the act which effected the repeal did not affect the jurisdiction of the court in cases pending when it was enacted. GRAY, J., said: "The conclusive answer to this argument is, that a statute which repeals an earlier one, either expressly, *or by implication*, without any saving clause, makes it ineffectual to support any proceeding, whether not yet begun, or pending at the time of its passage, and not already prosecuted to final judgment vesting absolute rights. The books are so full of cases illustrating this principle, that the only difficulty is in making a selection."

This whole subject was very fully considered by COWEN, J., in *Butler* v *Palmer*, (1 Hill, 324). He reviewed the authorities quite extensively, and came to the conclusion that, "No rights, arising under the repealed statute, can be saved, except by express reservation in the repealing act, or where those rights have been perfected by taking every step which depended for its force on the former act." It was also shown that the repeal of a statute conferring jurisdiction takes away all right to proceed under the repealed statute, even in suits or proceedings pending at the time of the repeal.

9. There is no saving clause in the act of 1871 which can possibly affect such a case as this.

The only thing like a saving clause to be found in the act of 1871, is contained in section four. That section provides for a review of the judgment of the County Judge under the act by *certiorari*, limits the time within which the *certiorari* may be allowed in such cases, and provides that the court, on such review, shall review all questions of law and fact, and then proceed as follows: "And the said courts or court of appeals, *in appeals now pending*, and in all future proceedings, may reverse or affirm or modify, in all questions of law or fact his final determination, or may remand the whole matter back to said County Judge to be again heard and determined by him. And it may by order direct that he proceed thereon *de novo*, in the same manner and with the same effect as if he had taken no action thereon, or it may by such

order specify how and in what particulars he shall hear and decide the same on such remanding thereof."

This section can have no possible reference to any case, except to future cases to arise under the act of 1871, or to cases which had already been decided by the County Judge, and where a writ of *certiorari* had been sued out of the Supreme Court to review his determination, and was then pending, or where an appeal was pending in the Court of Appeals from the judgment of the Supreme Court in such a case. The language is not very clear in respect to such pending appeals; but so far as the disposition of such cases is concerned, they seem to be placed on the same footing with cases afterwards to arise under the act of 1871. The court might reverse, affirm or modify the judgment; and, in case of reversal, might, or might not, remand the proceedings to the County Judge to be again heard and determined by him; and in case the court should determine to remand such proceeding it might direct that the County Judge should proceed thereon *de novo*, in the same manner, and with the same effect, as if he had taken no action therein, or it might by such order, specify how and in what particulars he should hear and determine the same on such remanding thereof.

The act is entirely silent as to cases still pending undetermined before the County Judge, and also as to cases where judgment had been rendered by the County Judge, but where no writ of *certiorari* had been issued to review such judgment. The legislature made no provision whatever for cases pending and undetermined before the County Judge. Section four cannot be tortured so as to make it operate as a saving clause in such a case as this. There is no language in it upon which such a construction can be based. The very fact that the legislature saw fit to insert a saving clause in respect to cases which had been removed to the Supreme Court by *certiorari*, and were pending there, or in the Court of Appeals, shows that the legislature understood the effect of the act of 1871 as a repeal of section one of the act of 1869, and that it designed to provide for the cases particularly spec-

fied in section four and for no others (*Kay* v. *Goodwin*, 4 Moore & Payne, 341). Be that as it may, a saving of such cases as this is certainly not expressed, and it cannot be implied. (*Surtees* v. *Ellison*, 9 Barn. & Cress., 750). Certainly no such implication can arise when the legislature has expressly provided for another class of cases pending in the higher courts, and has made no provision for cases remaining unfinished before the County Judge.

The act is silent as to whether, in case a proceeding should be remanded to the County Judge by the Supreme Court or the Court of Appeals, which had been decided by the County Judge before the act of 1871 took effect, should be proceeded in by the County Judge according to the act of 1869, or the act of 1871. This point has never been decided, and it is not now of any consequence. But it is fair to presume that the legislature intended that, in such a case, the County Judge should proceed under the act of 1869, as the petition would not comply with the act of 1871, and the petitioners did not consent to the bonding of the town under the latter act.

10. It is impossible to connect the two statutes together and to sustain the proceedings before the County Judge under the act of 1869 up to the time of the passage of the act of 1871, and then uphold them afterwards under the latter act, as the Circuit Court has undertaken to do.

(*a*) The act of 1871 has no retroactive effect, and cannot support proceedings commenced before its enactment.

Kelsey v. Kendall, 48 Vt., 24;
N. Y. & Os. M. R. R. Co. v. VanHorn, 57 N. Y., 473;
Burton v. Wickwire, 54 N. Y., 226;
The People v. Supervisors, 43 N. Y., 130;
Sanford v. Bennett, 24 N. Y., 20;
Dash v. VanKluck, 7 John. R., 477;
Smith v. Humphrey, 20 Mich., 398;
The State v. Smith, 38 Conn., 397;
The State v. Blakeman, 52 Mo., 578;
Sanford v. Barclay, 37 Cal., 11;
VanSittart v. Taylor, 4 El. & Black., 910;

Mann v. McAtee, 37 Cal., 11;
The People v. Carnall, 6 N. Y., 463;
Bowles v. Duff, 55 Barb., 580.

In order to bond the town under the act of 1871, the proceeding must be *commenced*, as well as closed, after that act took effect. So are all the authorities, and they are very numerous. This rule is especially applicable to a statute amending a prior statute, by declaring that it shall read in a given manner, as the act of 1871 does, (*Kelsey* v. *Kendall*, 48 Vt., 24; *Ely* v. *Holton*, 15 N. Y., 595; *Moore* v. *Mausert*, 49 N. Y., 332; *State* v. *Ingersoll*, 17 Wis., 331; *State* v. *Andrews*, 20 Texas, 230). In such a case, the prior statute is merged in the later one, and has no existence outside of it, except to uphold proceedings already had and *completed* under such prior act.

(*b*) There is no evidence that the County Judge attempted to proceed under the act of 1871, after it became a law, nor that he attempted to comply with its provisions.

Judge WALLACE assumes, that, after the act of 1871 took effect, the proceedings were had under and in pursuance of its provisions. But this is a mere assumption. The judgment of the County Judge does not afford the slightest evidence of it. The judgment is just such a judgment as should be rendered under the act of 1869 if it had been still in force. It recites the commencement of the proceeding on the 6th day of February, 1871, which was more than three months before the act of 1871 was passed. It also recites that the 23d day of February, 1871, was the day appointed for the hearing; that the parties appeared on that day, by their counsel, "and on that day and the days to which said proceedings were duly adjourned, made proof before me *of the facts set forth in said petition*, as to the number of tax-payers joining in the said petition and as to the amount of taxable property owned or represented by them, *as shown by the last preceding tax-list or assessment-roll of said town* and as to the whole number of tax payers of said town, and the whole amount of taxable property of said town, as shown by the

last preceding tax-list or assessment-roll of said town, and of all the facts necessary to be taken into consideration relating thereto; and other tax-payers of said town then and there appeared before said County Judge and expressed a desire to join as petitioners *in said petition*, and did so join as petitioners in said petition and in said application to bond said town for the purposes aforesaid; and proof being taken as to the number of tax-payers so joining in said petition and application with the other petitioners, and as to the amount of taxable property represented by them as appearing upon said tax-list or assessment-roll, and, ... it appearing satisfactorily to said County Judge that said petitioners whose names appear on said tax-list or assessment-roll, and the other tax-payers aforesaid of said town who did then and there, ... appear before him and express a desire to join in such application aforesaid, ... and whose name also appeared on said tax-list or assessment-roll, do represent a majority of the tax-payers of said town *as shown by the said last preceding tax-list or assessment-roll*, ... and do own or represent a majority of the taxable property on said list or roll."

These recitals not only do not show that the County Judge proceeded under the act of 1871, after it became a law, but they show the contrary. They show, in express terms, that he proceeded according to the act of 1869, taking the last preceding tax-list or assessment-roll as the sole evidence as to the number of tax-payers, and including in the computation all tax-payers whose names appeared upon that roll, and no others. This is not according to the act of 1871. There is nothing here to show that the County Judge excluded from the computation those taxed for dogs or highway tax only, nor that he included the owners of non-resident lands taxed as such.

The language of the adjudication is equally decisive, especially when taken in connection with the recitals. It is as follows: "It is hereby adjudged and determined by the said County Judge, ... that said petitioners whose

names appear upon said tax-list or assessment-roll, and who are assessed thereon, and the other tax-payers aforesaid of said town who did then and there, ... appear before him and express a desire to join in said petition . . . . . do represent a majority of the tax-payers of said town, *as shown by the said last preceding tax-list or assessment-roll*, ... and do own or represent a majority of the taxable property, as shown by said last preceding tax-list or assessment-roll."

There is nothing here to show that the County Judge undertook to comply with the act of 1871. It is manifest that the basis of computation which he adopted is that prescribed by the act of 1869, and not that required by the act of 1871.

(*c*) It was utterly impossible for the County Judge to comply with act of 1871.

The power of the County Judge, in cases of this kind, is clearly defined, and it is exceedingly limited. All he could do was to take evidence, or proof, of certain facts *set forth in the petition;* and determine whether those facts were true. He could not go out side of, or beyond, the petition in determining these facts. In this respect, both statutes make the petition his guide.

In order to understand this point we must look to the language of section two of the act of 1869, which, so far as I shall quote, is but slightly changed by section two of of the act of 1871, though several new provisions are added at the end of it by the latter act. In the act of 1869, that section reads as follows:

"§ 2. It shall be the duty of the said judge at the time and place named in said notice to proceed to take proof *as to said allegations in said petition;* and if it shall appear satisfactorily to him that the said petitioners, or the said petitioners and such other tax-payers of said town as may then and there appear before him and express a desire to join as petitioners in said petition, do represent a majority of the tax-payers of said municipal corporation, as shown by the last preceding tax-list or assessment-roll, and do represent a majority of the taxable property upon said

list or roll, he shall *so* adjudge and determine and cause the same to be entered of record."

This section of the statute was construed by the Court of Appeals of this State in 1871, almost a year before the County Judge rendered the judgment in question. In *The People* v. *Smith*, (45 N. Y., 777), GROVER, J., speaking for the court, said: "Section 2, vol. 2, of Laws of 1869, p. 2,304, makes it the duty of the County Judge, after the presentation of the petition specified in section one of the act and the publication of the notice thereby required, to take proof, as to whether the petitioners and such other tax-payers of the town as may then and there appear before him and express a desire to join as petitioners in said petition, are a majority in number of the tax-payers of the town, *as shown by the last preceding assessment-roll*, and represent a majority of the taxable property upon said roll. *The assessment-roll is made the only competent evidence of the number of tax-payers and of the amount of taxable property in the town.* It is conclusive upon these points. *The only questions* upon which proof is to be taken by the County Judge, and which are to be determined by him, are *whether the petitioners and such others as appear before the Judge and express a desire to join in the petition constitute a majority in number of the tax-payers, and whether they are liable to taxation as the owners of a majority of the property assessed for that purpose in the town.*"

This is not only a fair, but is a literal interpretation of the statute. I do not suppose that if it were an original question, this Court would give it any other construction. It shows that the County Judge could determine nothing but the facts stated in the petition.

In this case, the judgment shows, plainly enough, that the County Judge did not undertake to determine anything more.

This feature of the general bonding act is exceedingly important in several respects. I shall have occasion to advert to it again. This statute clothes the County Judge with all the judicial power which the act confers upon anybody. The commissioners have no judicial power.

Even the County Judge can determine nothing but the two questions—whether the petitioners are a majority of the tax-payers, and whether they own or represent a majority of the taxable property. The County Judge cannot determine these facts unless they are set forth in the petition.

In determining these facts, the County Judge must, of course, be governed by the description of tax-payers contained in the statute.

Now the description of the tax-payers contained in the petition in this case is that required by the act of 1869, and not that required by the act of 1871. The County Judge was tied up, not only by the act of 1869, but by the act of 1871, to a determination simply of the facts stated in the petition. He seems to have understood this; for his judgment is couched in such language as to indicate, very clearly, that he followed the petition in determining these facts, and that he adopted the basis of computation required by the act of 1869, and not that prescribed by the act of 1871. This is a fair construction of his judgment, and I do not think it admits of any other construction. It is therefore a mistake to assume that the proceedings "taken subsequent to the new act were in conformity with its requirements."

(*d*) The petition of the taxpayers did not comply with the act of 1871; and, therefore, the County Judge could not proceed under that act.

The People v. Smith, 55 N. Y., 135.

In the case last cited, it was held by the Court of Appeals, that a petition which was conceded to have been drawn in substantial conformity to the act of 1869, was not sufficient to give the County Judge jurisdiction under the act of 1871; that the petition was void; and that the whole proceeding was *coram non judice* and void.

The petition in that case was substantially in the same form as the petition in this case, omitting the condition and qualifying clause contained in the petition in this case.

It was presented to the County Judge after the act of 1871 took effect. It was held that, in order to give the County Judge jurisdiction under the act of 1871, the petition must show that the petitioners are not only a majority of the tax-payers of the town or municipal corporation to which it relates, but that they are a majority, "not including those taxed for dogs or highway tax only." ANDREWS, J., among other things, said: "The amendment of 1871 made an important change in the law. It excluded certain tax-payers from the class of qualified petitioners, and made it necessary, before a debt could be created under the act, that a majority of the tax-payers, other than those assessed for dogs or highway tax only, should assent thereto Under the act of 1869, the creation of the debt was authorized if the majority of the whole number of tax-payers in the locality, representing a majority of the taxable property, consented. The assenting tax-payers might constitute a majority of the tax-payers, and yet not be a majority, excluding those taxed for dogs or highway tax only. The object of the amendment of 1871 was to prevent the creation of a debt for railroad purposes by municipal corporations, unless a majority of the tax-payers having a substantial pecuniary interest in the question should assent to it.

"The petition in this case did not show that the petitioners were a majority of the tax-payers of the town of Gorham, excluding those taxed for dogs or highway tax only, and the County Judge acquired *no jurisdiction of the proceeding*. His authority could only be invoked by the presentation of a petition in conformity with the statute, and he could not on his own motion dispense with the performance of a condition precedent to the exercise of the authority conferred by the act."

Now if a petition drawn in conformity to the act of 1869 is not good since the act of 1871 took effect, it must be because the act of 1869, so far as it is changed by the act of 1871, is repealed. If a petition complying with the act of 1869 is void when presented under the act of 1871, it must be because it does not comply with the latter act,

and cannot be supported by the former act. If such a petition is void when presented under the act of 1871, how can it support a proceeding commenced under the act of 1869, but which remained unfinished when the act of 1871 took effect.

(*e*) It is the policy of each of these acts to require a written petition *drawn according to its own provisions*, and *signed by a majority of the tax-payers of the classes made competent petitioners by it.*

The judgment must be based upon the petition. It determines the facts stated in the petition, and nothing more. The judge is authorized to take proof of those facts, and nothing else. The proofs must be directed to the establishing of those facts, and whatever does not have that tendency, must be rejected.

There was at least one hearing before the County Judge while the act of 1869 remained in force, and there may have been more. It is scarcely probable that the case was adjourned from the 23d day of February until after the 12th day of May. While the act of 1869 remained in force, we must assume that the Judge proceeded under the act in determining the qualifications of petitioners and the competency of evidence. When the act of 1871 took effect, the Judge had no petition before him drawn according to that act. In order to determine the facts required by that act, he must go outside the allegations contained in the petition. He might have to reject much of the evidence which he had already admitted. He might have excluded evidence which would now be competent.

The County Judge could have no jurisdiction under either act until the tax-payers set him in motion. They must exercise their power first. The tax-payers never exercised their power under the act of 1871. They never attempted to do so. They might not have been willing to do so. They exercised their power under the act of 1869. It is fair to presume that they did so with the expectation that the statute would remain in force long enough to complete the proceeding, and the bonds would

be issued under that act, payable in thirty years from their date. Certainly they never consented to the bonding of the town in any other way, nor under any other law. Perhaps none of them would have verified the petition under the act of 1871. The verification might have been true upon the basis of computation prescribed by the act of 1869, and yet not be true upon the basis of computation prescribed by the act of 1871. The petitioners might be a majority of the tax-payers under the act of 1869, and yet not be a majority upon the basis of computation prescribed by the act of 1871.

When the legislature, by the amendment of 1871, excluded from the computation one whole class of tax-payers who were competent petitioners before, and admitted another whole class who were not competent before, and made various other important changes in the basis of computation, it is not to be supposed that it was in the contemplation of that body, that a proceeding commenced under the act of 1869 could be continued under the act of 1871, especially as cases which had been removed to the Supreme Court by *certiorari*, and were pending there, or in the Court of Appeals, were expressly provided for, in case they should be remanded to the County Judge.

The amendment of 1871 does not relate to "procedure," merely, as the Circuit Court seems to have supposed. True, it relates, to some extent, to the mode of procedure: but it relates also to *jurisdiction*. It was section one of the act of 1869 which prescribed the manner in which the County Judge should acquire jurisdiction in cases of this kind. He could acquire jurisdiction in no other way. There was no other statute or law giving him jurisdiction in such cases. The amendments relate to the jurisdictional facts, and the contents of the petition.

The proceeding could not be completed under the act of 1871 because that act did not apply to a proceeding commenced and partly conducted before its enactment; and because the petition did not comply with that act. The proceeding could not be completed under the act of 1869; for that act, so far as it was changed by the act of

1871, was out of existence. The consequence is, that the proceeding could not be completed at all. It was completely arrested. So all the cases hold.

There are other amendments and new provisions contained in the act of 1871, which, with those already noticed, indicate a design, on the part of the legislature, to supercede or modify large portions of the act of 1869, and to substitute in place thereof a new scheme. Section two of the act of 1869 is amended, in the same way, by section two of the act of 1871, and several new provisions are added.

It is this section which gave the County Judge authority to render the judgment: and though the part of the section which confers this power is but slightly changed, yet it has a very different meaning; for the judgment must determine a different state of facts. It must be based upon a different petition, which changes the basis of computation. The new provisions which are added are quite important.

Section four of the act of 1869 is also amended by section six of the act of 1871 by adding two important new provisions at the end thereof. One of these new provisions changes the time at which the bonds shall be made payable. It is as follows: "The said commissioners may issue the said bonds payable at any time they may elect, less than thirty years, any law heretofore passed to the contrary, *but they shall not so issue said bonds that more than ten per cent. of the principal of the whole amount of bonds issued shall become due or payable in any one year.*"

There are some other changes in the law of less importance. Those which I have referred to show most clearly an intention on the part of the legislature to change the whole scheme for bonding municipal corporations. The changes are so numerous and so important that it is impossible to complete a proceeding commenced under the act of 1869, and according to its provisions, after the act of 1871 took effect, according to its provisions.

The further steps to be taken, after the act of 1871 took effect, must be taken in accordance with some law which

was in existence at the time when such further steps were taken (*Town of Concord* v. *Portsmouth Savings Bank*, 2 Otto, 625). These steps must also be taken under the law in pursuance of which the proceedings thus far had been conducted. It was with reference to that law that the tax-payers gave their assent to the bonding of the town. When that law was so far changed that the proceeding could not be completed under it, it could not be completed at all. It was impossible to comply with the act of 1871, in that proceeding, for the proceeding had not been commenced under it, nor in accordance with it.

III.

The judgment of the County Judge is *void on its face*, and therefore it does not conclude anybody.

1. The petition is *a part of the judgment-roll*, and the judgment is *founded on it*.

The statute provides that, "The Judge shall file the petition as a part of the judgment-roll." (Laws of 1871, chap. 925, § 2). This act was in force at the time of the rendition of the judgment, and the Judge obeyed the injunction referred to. This is one of the new provisions added to section two of the act of 1869, to which I have referred. There was evidently a purpose in making this provision. The legislature evidently regarded the petition, as the courts have, as the initial, jurisdictional steps in the proceedings, and absolutely essential to the jurisdiction of the Judge; and having prescribed the form and contents of the petition, they did not intend that anybody should be concluded, or prejudiced, by recitals in the judgment as to the contents of the petition, while, perhaps, the petition might not be found. They intended the petition should form a part of the judgment; and by another addition to this section they provided that the judgment should "be entered of record in the office of

the clerk of the county in which said municipal corporation is situated."

2. The illegality of the petition, and, consequently, the want of jurisdiction of the Judge to render the judgment, appear upon the face of the record: and all who claim any rights, or, to exercise any powers, under the judgment, are bound to take notice of its invalidity.

Dicks v. Hatch, 10 Iowa, 380;
Townsend v. Jeffries, 17 Ala., 276;
Reed v. Wright, 2 Greene, (Ia.), 15;
Bloom v. Burdick, 1 Hill, 141.

3. It appears upon the face of the record, that the proceeding was commenced under the act of 1869, and while it was in force, and was continued and closed after the act of 1871 took effect, which could not be lawfully done.

4. The judgment is a nullity, and it may be attacked collaterally.

Galpin v. Page, 18 Wall., 350;
Dobson v. Price, 12 N. Y., 164;
Sears v. Terry, 26 Conn., 273;
Galpin v. Page, 1 Am. L. T. R. N. S., 523;
Canal Bank v. Judson, 8 N. Y., 254;
Elliott v. Pearsoll, 1 Peters, 350;
Hamden v. Mulford, 2 Dutch., 49;
Harrington v. The People, 6 Barb., 607.

5. The provision in the bonding act (§ 2) that "such judgment and the record thereof shall have the same force and effect as other judgments and records in courts of record in this State," does not preclude an inquiry into the question, whether the Judge acquired jurisdiction, in the first instance, by the presentation to him of a petition in conformity with the act.

(*a*) There is a similar statute in the State in relation to

Surrogates' orders for the sale of real estate (Laws of 1850, chap. 82, § 1).

(*b*) Before the passage of this act, it was held that a Surrogates' court was a court of inferior and limited jurisdiction, and that a party claiming title under its decree must show, affirmatively, that the Surrogate had authority to make the decree, and that the facts upon which he acted gave him jurisdiction.

Schneider v. McFarland, 2 N. Y., 459;
Corwin v. Merritt, 3 Barb., 341;
Bloom v. Burdick, 1 Hill, 130.

(*c*) It has been held that the effect of the act of 1850 is to throw the burden of proof upon the party seeking to impeach a sale, and that if he fails to show a want of jurisdiction in the Surrogate to make the order, the law presumes that it was properly made; but that if he shows, affirmatively, that the Surrogate did not acquire jurisdiction, the proceedings will be held invalid as before the act, and for the same causes.

Wood v. McChesney, 40 Barb., 417;
Chandler v. Northrop, 24 id., 129;
Forbes v. Halsey, 26 N. Y., 63.

(*d*) The statute of the State in relation to absconding, concealed and non-resident debtors provides that the appointment of the trustees shall be "*conclusive evidence* that the debtor therein named was a concealed, absconding or non-resident debtor, within the meaning of the foregoing provisions, and that the said appointment and all the proceedings previous thereto were regular." (2 R. S. 13, § 62).

(*e*) It has been repeatedly and uniformly held, that this statute does not preclude an inquiry into the jurisdiction of the Judge to entertain the proceedings.

Staples v. Fairchild, 3 N. Y., 41;
Van Alstyne v. Erwin, 11 id., 331;
Wood v. Chapin, 13 id., 509;
Decker v. Bryant, 7 Barb., 182;
Matter of Faulkner, 4 Hill, 589;
Matter of Hurd, 9 Wend., 465.

(*f*) There is a similar provision in the act in relation to discharge of insolvent debtors, commonly called the two-third act,—making the discharge "conclusive evidence of the proceedings and facts therein contained." (2 R. S., 38, § 19).

(*g*) It is well settled that this statute does not make the discharge conclusive evidence of the facts requisite to give the officer jurisdiction to entertain the proceedings, though they are therein stated to have been proved before him.

Stanton v. Ellis, 12 N. Y., 575;
Hale v. Sweet, 40 id., 97;
Ely v. Cook, 28 id., 365;
Morrow v. Freeman, 61 id., 515.

This is enough to show that the clause in the bonding act, above referred to, cannot have the effect to preclude an inquiry into the sufficiency of the petition to give the Judge jurisdiction in the first instance. It was never designed to have any such effect. If it had been, the legislature would not have inserted in the same section, by way of amendment, the clause requiring the Judge to "file the petition as a *part of the judgment-roll.*" If the judgment had been a judgment of a court of record it would not have precluded an inquiry into the jurisdiction of the court, especially if the want of jurisdiction appeared upon the face of the proceedings. It would still have been a judgment in a special proceeding. (*Striker* v. *Kelly*, 7 Hill, 9, 22; *Galpin* v. *Page*, 18 Wall., 350).

What then was the design, and what is the effect, of the clause in question? It was evidently intended to make the judgment conclusive upon the two questions which the County Judge is required to decide upon evidence adduced before him, viz.: whether the petitioners constitute a majority of tax-payers and whether they represent a majority of the taxable property of the municipality.

In a certain sense, these are jurisdictional questions, (*The People* v. *Knowles*, 47 N. Y., 415; *The People* v. *Smith*, 45 id., 772; *The People* v. *Hulburt*, 46 id., 110). They are not, however, jurisdictional in the same sense as the question, whether the petition is sufficient to give the Judge jurisdiction in the first instance. They are submitted to the Judge to be determined by him upon the whole of the evidence *as matters of fact;* and when decided, the legislature evidently intended that the decision, as to them, should be final and conclusive, unless reversed upon *certiorari*. That was one of the reasons why a formal judgment was provided for, with this provision as to its effect.

An examination of the previous legislation of the State in respect to bonding municipalities, and the decisions of the courts under such previous acts, will convince anyone that such was the design. But for these provisions, it would be a good defence, in the State courts, even as against a *bona fide* holder of the bonds, to show that the assent of the requisite majority of the tax-payers was not obtained, (*The People* v. *Mead*, 36 N. Y., 224; 24 id., 114); and persons who could not claim to be *bona fide* holders would have to prove, affirmatively, that a majority did assent, (*Starin* v. *The Town of Genoa*, 23 N. Y., 439). This was one of the difficulties which the legislature intended to obviate.

The courts have gone a good way in holding a judicial decision conclusive where the jurisdictional question was, by the statute, submitted to the Judge or officer to be determined *upon evidence submitted to him*, and where the evidence had a tendency to establish the jurisdictional

facts, (*Skinnion* v. *Kelly*, 18 N. Y., 355; *Miller* v. *Brinckerhoff*, 4 Denio, 118; *Kissock* v. *Grant*, 34 Barb., 104; *Sheldon* v. *Wright*, 5 N. Y., 497; *Dykeman* v. *The Mayor, &c., of New York*, 5 N. Y., 434; *Adams* v. *Saratoga, &c., R. R. Co.*, 10 id., 328).

But this case does not belong to this class. The *statute* has determined what the petition shall contain; and in this respect its requirements are few and simple, but *positive and certain*. There is no room for doubt or uncertainty. It is not submitted to the Judge to determine, upon evidence, whether the petition is in conformity with the statute. All he has to do, in this respect, is to compare the statements in the petition with the requirements of the statute, and see whether those statements conform to such requirements. If they do, he has a right to proceed. If they do not, he has no power whatever.

The position of the Circuit Court that the judgment of the County Judge is conclusive upon the question of his own jurisdiction cannot be sustained. There is no authority for such a doctrine. So far has this doctrine been carried, that a petition providing for a misappropriation of the bonds to a purpose which the legislature could not authorize, and did not attempt to authorize, does not vitiate the petition. It is conceded that this provision is vicious and contrary to public policy, and yet the court held that if the County Judge determines that such a petition is sufficient to give him jurisdiction, that determination is conclusive, and that no other court can inquire into the matter collaterally.

The simple statement of this position, it seems to me, is enough to refute it. Let us look at the precise language of the statute as to the prayer of the petition. It authorizes the petitioning tax-payers to make application to the County Judge, by petition, "setting forth" certain facts, "and that they desire that such municipal corporation shall create and issue its bonds to an amount named in such petition (but not to exceed twenty per cent. of the whole amount of taxable property as shown by said tax-list and assessment-roll) and invest the same,

or the proceeds thereof, in the stock or bonds (as the petition may direct) of such railroad company in this State as may be named in said petition."

Is there anything here calling for the exercise of judicial discretion, or judgment, as to what the prayer of the petition should be? Is there any doubt as to the purpose to which the municipal bonds should be applied? Have the tax-payers a right to express any other desire than that prescribed by the statute as to the investment of the bonds or their proceeds? Have they a right to express a desire that a large, or any, portion of the bonds, or their proceeds, shall be invested in stock of the railroad company already subscribed and taken by themselves or other persons? Had the County Judge any right, or power, to entertain such a prayer?

These questions must all be answered in the negative. The County Judge knew he could not entertain such a prayer; but he seems to have thought that he could reject the part of the prayer which was unauthorized, and proceed upon the prayer as first expressed in the petition, without the qualifying clause. The judgment shows this clearly. In so doing, the County Judge, in effect, *changed* the prayer of the tax-payers. Striking out the qualifying clause, or disregarding it, gives the prayer a different meaning. It gives it a meaning which the tax-payers never expressed.

What right had the County Judge to amend the petition, or to treat it as amended? None whatever. The petition, as presented by the tax-payers, is the groundwork of the County Judge's right to proceed. He must take the petition as he finds it. If drawn according to the statute, it gives him jurisdiction; if not, he cannot cure the defect by adding to it, or disregarding a part of it. He could not acquire jurisdiction by deciding that he had it.

In *Morrow* v. *Freeman*, (61 N. Y., 515), it was held, in accordance with a number of prior decisions, that, where the schedule annexed to the petition presented by an insolvent debtor for the purpose of instituting proceedings

for his discharge under the "two-thirds act" (2 R. S., 16, *et seq.*), shows, upon its face, that the creditors joining in the petition do not own two-thirds of the debts owing by the insolvent to creditors residing in the United States, the officer acquires no jurisdiction, and a discharge based upon the petition is void.

After referring to the provisions of the statute then under consideration, which are no more precise or certain than the statute now in question, DWIGHT, C., said: "Under these carefully drawn provisions, the fact that two-thirds of the creditors sign the petition is jurisdictional. The petition is the groundwork of the officer's right to proceed. The eighth section only authorizes the officer, on receiving *such* a petition, schedule and affidavit, as have been provided for in the previous sections, to issue an order requiring all the creditors of the insolvent to show cause, at a specified time and place, why an assignment of the insolvent's estate should not be made and he be discharged from his debts. Without the petition, as provided by the statute, he has no power to proceed with the matter. This case is governed by the principles announced in *Nat. Bk. of Chemung* v. *City of Elmira*, (53 N. Y., 49, 53), and many other cases concerning the powers of magistrates or officers having a special or limited jurisdiction. The officer acting under a special authority, conferred by statute, must see that he acts within the authority. *He cannot acquire jurisdiction by deciding that he has it.* He must, in fact, possess it. In other words, the facts must exist upon which the legislature were willing that the officer should act."

IV.

The judgment being void, the appointment of the commissioners is equally void, and, consequently, they had no authority to issue the bonds in question, and the bonds and coupons are void.

The judgment is an absolutely essential part of the plaintiff's case. It is the only evidence of the appointment of the commissioners. The statute does not appoint them, nor does it authorize the County Judge to appoint them until he has rendered a valid judgment, determining the existence of the facts essential to the bonding of the town.

As the defendant in error does not make any pretensions to being a *bona fide* holder of the coupons in suit, but admits that he purchased them after they were due, and with knowledge that there was litigation about the bonds, it may not be necessary, in this case, to point out the great difference between this statute and the bonding acts which have been under consideration by this court in the numerous cases which have been decided here. But I am unwilling to submit this case without a brief statement of the peculiarities of this law, in which it differs from all the statutes which have been considered by this court. Though the defendant in error be not a *bona fide* holder, yet so far as the points already made are concerned I claim it would make no difference if he were a *bona fide* holder.

One great difference between this case and most of the cases which have been decided by this court is that the statute does not appoint the commissioners. Another difference is, that this statute does not confer, either expressly, or by implication, any judicial power upon the commissioners. All the judicial power to be exercised under it, must be exercised by the County Judge before any commissioners can be appointed). The commissioners are mere ministerial agents appointed by the County Judge, in pursuance of the statute, to subscribe for the stock of the railroad company and to issue the bonds. They can decide nothing. They can make no recitals in the bonds which will bind the town.

A principle has been settled by this court, in a number of cases, which is expressed by Mr. Justice STRONG, in *Town of Coloma* v. *Eaves*, (2 Otto, 484), in these words: "Where legislative authority has been given to a munici-

pality, or to its officers, to subscribe for the stock of a railroad company, and to issue municipal bonds in payment, but only on some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the legislative enactment that the officers of the municipality were invested with power to decide whether the condition precedent has been complied with, their recital that it has been, made in the bonds issued by them and held by a *bona fide* purchaser, is conclusive of the fact, and binding upon the municipality; for the recital is itself a decision of the fact by the appointed tribunal."

This principle can have no application to a case arising under the general bonding law in question. The legislature never intended to make a law to which that principle could apply. The legislature has provided another tribunal to decide the facts which are essential to the authority to subscribe for stock and issue bonds, and has required that a public record shall be made of that determination. The law also defines the mode in which a majority of the tax-payers, owning or representing a majority of the taxable property, shall exercise their power, under the act, so as to confer jurisdiction upon the County Judge to determine the facts set forth in the petition, and required by the act to be determined. This action of the tax-payers must be embodied in a written petition, which must be presented to the County Judge, and which he is required to make a part of the judgment which he shall render, and to file the same with the judgment in the county clerk's office, where everybody can find it who has any interest in investigating the legality of the proceedings in any such case. Every step in the progress of the proceedings is made a matter of record, except the evidence taken by the Judge to prove the facts set forth in the petition.

In all the cases which have been decided by this court, and in which the principle to which I have referred has been applied, the statute itself created the agency, and appointed the agents to execute the power; and, because

no other tribunal was provided to decide whether the necessary preliminary steps had been taken, it was held that the commissioners were impliedly authorized to decide those questions. Not so in this case. The statute does not create the agency, nor appoint the agents. It provides a mode by which the agency may be created and the agents appointed. It defines precisely the proceedings which must be had in order to the creation of the agency and the appointment of the agents. That mode must be complied with or there can be no agents, and, consequently, no agency. When the agents are appointed, they have no judicial power, but that power must have been exercised by the County Judge before their appointment, and a record of the exercise of that power must have been made.

This feature of the general bonding act now under consideration distinguishes this case from every case which has been decided by this court in which the principle to which I have referred has been asserted and applied.

Whoever drew this statute seems to have understood the rulings of this court, as well as the rulings of the State courts, which were well known to be in conflict, upon this point, and to have intended to frame a law to which the decisions of this court, in the respect mentioned, would not be applicable. He seems to have understood the difference between the rulings of this court and the Court of Appeals of the State. We may well suppose that the legislature understood that difference also, and intended to enact a law which should not give the commissioners any power of a judicial nature, but that the judicial power should be exercised by another tribunal before any commissioners could be appointed, and require that the evidence of the exercise of that judicial power should be made a matter of public record.

Under this act the plaintiff could not rest his case upon proving the signatures of the commissioners to the bonds, and producing the bonds in court, as might be done, and often has been done, in cases of the class to which the principle above adverted to applies; but he

must produce the judgment of the County Judge, of which the petition of the tax-payers must form a part. When that judgment is offered in evidence, the question must arise, whether it is a legal, valid judgment, or whether it is void. The question must arise, whether the petition of the tax-payers is so drawn as substantially to comply with the statute, and so confer jurisdiction upon the County Judge; or whether the petition is so drawn as to violate the express provisions of the statute, and provide for some misappropriation of the municipal bonds; or, whether the petition is so drawn as not to set forth a statement of the facts essential to the bonding of the town; and so confer no jurisdiction upon the County Judge.

The very object of giving the adjudication of the County Judge the force and effect of a judgment of a court of record, and of making the petition a part of that record, was that there might be record evidence of the proper exercise of the power of the tax-payers of the town, as well as of the proper exercise of the power conferred upon the County Judge; so that it might be seen and known whether there was any radical defect in the exercise of these powers, which would vitiate the proceedings; and so that the proper exercise of these powers, both by the tax-payers, and by the County Judge, might be proved by the record, if valid. There could have been no other object in these express provisions of the statute.

This leaves no room for the exercise of any judicial power by the commissioners. Their recitals in the bonds in respect to the petition, the judgment of the County Judge, and the appointment of the commissioners, go for nothing. They are in no sense judicial determinations. They are not even evidence of the facts recited.

I presume it will not be disputed, that, if I am right in the position which I have taken as to the effect of the amendments of 1871, the County Judge lost his jurisdiction over the case, and that the proceeding fell between the two statutes. The statutes are public statutes, of which everybody is bound to take notice, and the fact that the proceeding was commenced under the act of 1869

and concluded under the act of 1871, appears upon the face of the record. These statutes are referred to on the face of the bonds; and the coupons refer to the bonds.

The case comes within the principle of the case of *McClure* v. *Township of Oxford*, (4 Otto, 429), that every dealer in municipal bonds, which, upon their face, refer to the statute under which they were issued, is bound to take notice of the statute and of all its requirements; and that where, upon their face, the coupons refer to the bonds to which they were attached, and purport to be for the semi-annual interest accruing thereon, the purchaser of them is charged with notice of all which the bonds contain. It was further held in that case, that if any of the essential proceedings prescribed by law for investing municipal officers with power to subscribe for stock, and issue bonds in payment thereof, be dispensed with, the bonds will be invalid in the hands of all who cannot claim protection as *bona fide* holders.

Under the act in question, the judgment of the County Judge is just as essential to the authority of the commissioners and their appointment as such, as the statute itself,—made so by the statute. The judgment is just as much a matter of public record as the statute; and the statute informs every dealer in the bonds where that judgment may be found, and of what it must consist. If the judgment is void on its face, every dealer in the bonds or coupons is bound to know it. He has the same opportunity to know it as the commissioners have.

This is clearly the policy of both these statutes. The purchaser of the bonds must look to the judgment of the County Judge to find the authority for the appointment of the commissioners; and, in this case, that appointment is contained in the judgment, and there is no other evidence of it.

The points which I have thus far made are raised by the first, second, third, ninth and tenth assignments of error, and the objections and requests, and the rulings of the court, referred to in such assignments of error.

V.

These bonds were never legally delivered so as to give them any inception.

1. By section five of the act of 1869, it is provided that: "Such commissioners are further empowered and directed to subscribe in the name of the municipal corporation which they represent, to the stock or bonds of the railroad company named in such petition (as the petition may direct), to an amount equal to the amount of bonds so created by them, and to pay for the same by exchanging the said bonds therefor at par; or they may, at their discretion, sell and dispose of the said municipal corporation bonds so created by them at rates not less than par and invest the proceeds thereof in such stock or bonds of such railroad company as may be directed in said petition."

This section was not amended by the act of 1871. The commissioners had a discretionary power, as to whether they would exchange said bonds directly with the railroad company for an equal amount of its stock, or would sell said bonds, at rates not less than par, and invest the proceeds thereof in such stock.

2. This is a very important power; for in case the commissioners should elect to sell the bonds, the railroad company would receive aid from the town to the full amount of the par value of the bonds; while, in the other event, the railroad company could sell the bonds for any price it might see fit to accept, and could obtain, which might be much less than their par value; and then the company would receive aid only to the extent of the price so obtained.

3. The commissioners had no authority to delegate this discretionery power to DeWitt Parshall, or to any one else.

Jackson County v. Bush, 77 Ill., 59;
The People v. Van Valkenburg, 63 Barb., 105;
Cooley's Const. Lim., 204, 205;

Dillon on Muni. Corp., § 60;
Thompson v. Schermerhorn, 6 N. Y., 62;
Ruggles v. Collier, 43 Mo., 359;
Oakland v. Carpenter, 13 Cal., 540;
The People v. Hughitt, 5 Lans., 89;
Falconer v. B. & J. R. R. Co., 69 N. Y., 491;
The People v. Smith, 45 N. Y., 772;
The People v. Hulburt, 46 N. Y., 110.

4. The commissioners have undertaken to delegate the power to DeWitt Parshall to determine whether the bonds should be delivered directly to the railroad company, or sold in the market and the proceeds paid over to such railroad company.

It was proved by the plaintiff that the bonds, to the amount of $135,000 were delivered by the commissioners to DeWitt Parshall "under a written agreement between said commissioners and said railroad company by DeWitt Parshall, its agent, dated May 17th, 1872, and which is hereinafter set out." (See Record, page 69). The plaintiff did not see fit to introduce this agreement in evidence; but he did prove that the bonds were delivered under it. The agreement was afterwards introduced in evidence by the defendant.

This agreement was made at the same time with the subscription for the stock of the railroad company, and the delivery of the bonds to Mr. Parshall. The stock was subscribed for under this agreement, and in pursuance of it.

By this agreement it appears that the bonds were to be delivered to DeWitt Parshall, *in trust*, as thereinafter expressed, in exchange for an equal amount of stock for said company. It is provided that, "Said company shall construct and complete its road through the village and town of Lyons to Nicholas Point, on Great Sodus Bay. Said bonds, *or the proceeds of said bonds*, shall be first used to buy the right of way and the necessary ground for the use of said railroad through the county of Wayne, for the purpose of grading the road-bed and preparing

the same for the ties, including masonry and bridging, and the purchasing and laying down the ties ready for the iron through the county of Wayne.

"Said Parshall is to hold said bonds, *or the proceeds thereof*, in trust, and shall pay over to said company said bonds, *or the proceeds of said bonds*, as fast as the above mentioned work shall progress, and shall not be required to pay the same faster than the progress of said work will justify." The railroad company agreed that, "in consideration of the delivery of said $135,000 bonds of said town of Lyons to DeWitt Parshall, trustee as aforesaid, they will issue one hundred and thirty-five thousand dollars in the stock of the same railroad, and deliver the same to the party of the first part, and will construct and complete said railroad through the village and town of Lyons to Nicholas Point, on Great Sodus Bay, as soon and as fast as the same can reasonably be done; and the said bonds, *or the proceeds of said bonds*, shall first be expended as hereinbefore expressed; that said Parshall shall not be required to advance the same faster than the progress of the work will justify." (See Record, page 73).

5. This agreement is clearly unlawful and void.

The commissioners, as soon as they were appointed, parted with all control over the bonds; but they did not dispose of them in either of the ways authorized by the statute. They did not sell them in the market, at rates not less than par, nor did they exchange them with the railroad company for its stock. They did not deliver them to the railroad company; but they transferred them to a trustee, upon trust that he should deliver them, *or their proceeds*, to the company as fast as the progress of the work would justify. This plainly implies that the trustee was to have the power, either to sell the bonds in the market and pay over the proceeds of such sale to the company, or to deliver the bonds themselves to the company; *thus conferring on the trustee the discretionary power which the statute gave to the commissioners.* The commissioners have not reserved any power to exercise this discretion themselves.

There is no provision in the statute authorizing the appointment of a trustee, or the delegation of this power to anyone. What right had the commissioners to appoint a trustee to exercise this discretionary power conferred upon them by the statute? What right had they to appoint a trustee to hold the bonds, or their proceeds, and to deliver either the one or the other to the company, not faster than the progress of the work would justify? Who shall judge what the progress of the work would justify? The commissioners have not reserved any right to determine the point. They reserved no control over the bonds, or the proceeds of their sale. There is no agreement that the trustee is to be under their direction or control. It must be the trustee who is to exercise this important power under the agreement. The statute does not give the commissioners any authority to confer any such power. They have clearly exceeded their powers; and neither the trustee, nor the railroad company, has acquired any title to the bonds or coupons.

6. This agreement is not authorized by chapter 507 of the laws of 1870.

The first section of this act provides that, "It shall be competent for any corporation, in aid to the construction of whose railroad bonds shall have been authorized to be issued by any municipal corporation in this State, to enter into any agreement with the commissioners appointed to issue said bonds, limiting and defining the times when, and the proportions in which, said bonds, or their proceeds, shall be delivered to said corporation, and the place or places where, and the purposes for which, such bonds or their proceeds shall be applied or used, and any such agreement in writing, duly executed by such corporation and a majority of such commissioners, shall in all courts and places be valid and effectual."

This agreement does not limit or define *the times when*, or *the proportions in which*, said bonds or their proceeds shall be delivered to the railroad company; nor does it determine whether the company shall have the bonds themselves, or the proceeds of their sale; but all these

questions are left to the discretion of the trustee. The agreement does specify, to some extent, the purposes for which the bonds, or their proceeds, shall be applied.

The act of 1870 confers an important discretionary power upon the commissioners, in several particulars. The commissioners have not, by this agreement, exercised this discretion, except in one particular, viz.: the purpose for which the bonds should be used. In all other respects, they have undertaken to confer the whole power upon the trustee. *He* is to determine the *times when, the places where and the proportions in which* the bonds are to be issued, or delivered to the company, with no guide, except that he shall not be *required* to deliver them faster than *the progress of the work would justify; of which he was to be the sole judge.* The commissioners have no voice in the matter. For this there is no warrant, either in the statute, or the general principles of law.

In *Jackson County* v. *Bush*, (77 Ill., 59), it was held that, if the people of a county vote a subscription in aid of a railroad company, to be paid in bonds of the county upon certain conditions precedent, the county authorities cannot delegate power to others to determine when the conditions are performed, but must determine the facts themselves, as the authorized agents of the people; that this is an official trust, which cannot be delegated.

By the order of the county court, attempting to create the trust, and directing the issue of the bonds, the trustees were directed to deliver bonds to the railroad company to the amount of $50,000 when the railroad should be completed to Murphysboro, and bonds for the remaining $50,000 when the railroad should be completed from Cairo to St. Louis, and the cars running thereon, but not otherwise.

That case was a bill in equity to restrain the negotiation of the bonds, and to compel the persons attempted to be appointed trustees to deliver up the bonds and coupons to the county officers. The court granted the decree prayed for without passing upon the question, whether the county had legally voted for the subscription, or

whether the conditions upon which the bonds were to be issued had in fact been complied with or not. The simple fact of putting the bonds and coupons into the hands of trustees, to be delivered when they should determine that such conditions had been performed, was considered a sufficient ground for the interposition of a court of equity. It was held that the bonds had never been legally delivered; that the trustees had no title to them, nor any power over them; and that they had no right to dispose of them. The opinion of the court is too long to quote. Among other things, SCOTT, J., said: "No authority can be found for placing them (*i. e.*, the bonds) in the hands of trustees with directions when they should deem the conditions on which the subscriptions had been voted complied with, to deliver them to the railroad company, in payment of stock to be issued to the county." Again, the learned Justice said: "This is an official trust, which neither the county court nor its successors, the board of supervisors, could delegate to strangers owing no obligation or allegiance to the county."

In *Falconer* v. *The B. & J. R. R. Co.*, (69 N. Y., 491, 501), the bonds had been placed in the hands of third persons to be delivered upon the performance of certain conditions. FOLGER, J., speaking for the court, said: "Surely there is no power of that kind given in the petition or judgment or statute."

It cannot be pretended that these bonds or coupons had any inception in the hands of Mr. Parshall. He could not recover upon them, or in any manner enforce them, against the town. How then could Mr. Munson, the defendant in error, acquire any title to the coupons on which he seeks to recover? The bonds themselves from which these coupons were detached, remained in the hands of Mr. Parshall, never having been delivered to the railroad company, or to any one else, so as to give them any inception. Mr. Munson received the coupons after their maturity, or after the time had elapsed when they were to be paid, according to their terms, and with full knowledge of the trust agreement. He stands in no

better position than Mr. Parshall. He has no title to these coupons. He is in no sense a *bona fide* holder. He was the president of the railroad company, purchased these coupons with full knowledge of all the facts, bought them *at a discount*, giving his note for them payable to Mr. Parshall, one year from the date of the purchase. The pretended sale was evidently a mere sham, and the suit prosecuted either for the benefit of Mr. Parshall, or of the railroad company.

But the learned Judge at the Circuit held that the defendant could not avail itself of any defence arising under this trust-agreement, because it was not specially pleaded. He further held that the denial in the defendant's answer, which is a general denial, put in issue nothing but the *formal* execution of the bonds and the *formal* appointment of the commissioners.

VI.

The learned Judge at the Circuit erred in excluding the defence arising under the trust-agreement, and in holding that the general denial in the defendant's answer put in issue nothing but the *formal* execution of the bonds and the *formal* appointment of the commissioners.

I presume I need not argue this point at much length. Congress having adopted the rules of pleading and practice of the State courts for the government of the circuit courts in the States, respectively, the question is, what is the power, or office, of a general denial to a complaint in the State of New York? That question is well settled. In *Andrews* v. *Bond*, (16 Barb., 333), it was held that, under a denial of the allegations of the complaint, the defendant may introduce any evidence which goes to controvert the facts which the plaintiff is bound to establish in order to sustain his action.

In *Beaty* v. *Swarthout*, (32 Barb., 293), it was held that,

under the general denial of the code, evidence of a distinct affirmative defence is not admissible; that the only evidence which the defendant is entitled to give is limited to a contradiction of the plaintiff's proofs, and to the disproval of the case made by him. The subject is ably discussed by SELDEN, J., in *McKyring* v. *Bull*, (16 N. Y., 297), in which he lays down the same doctrine.

In *Wheeler* v. *Billings*, (38 N. Y., 263), it was held that, where the complaint alleges a promise by the defendant to pay a certain sum in consideration of a transfer to him of certain property, and this is denied in the answer, the defendant has a right to prove anything which will prove the allegations of the complaint untrue.

Numerous other cases might be cited, but it cannot be necessary to cite them, because there can be no dispute about this rule. A general denial puts in issue every fact which is essential to the plaintiff's right to recover.

In this case, the general denial puts in issue all the proceedings to bond the town of Lyons, including the appointment of the commissioners, the execution and *delivery* of the bonds and the subscription for the stock of the railroad company. All these things the plaintiff was bound to prove. This gave the defendant the right to disprove any of them.

In the attempt to prove the delivery of the bonds, the plaintiff failed to prove a delivery of them to the railroad company, but proved that they were delivered to one of the directors of the railroad company under the trust-agreement to which I have referred. The plaintiff did not see fit to put that agreement in evidence, but the defendant did. That agreement shows that the bonds were never delivered to the railroad company, and that the commissioners never sold them to anybody. It proved that the bonds were never legally delivered. This the defendant had a right to do under the general denial in its answer. No other answer would have been appropriate. The general denial covers every defence in this case. Even the defence specially pleaded was admissible

under the general denial, and the second answer was uncalled for.

The ruling of the learned Judge, if literally interpreted, would exclude any defence not specially pleaded, provided the plaintiff could produce bonds which, in form, appeared to be executed by some persons assuming to act as commissioners, and could also produce anything in the form of an appointment of the commissioners by the County Judge. No court has ever so construed the code of procedure before.

The general denial puts in issue not only the formal execution of the bonds, but *the authority to execute them.* It not only puts in issue the *formal* appointment of the commissioners, *but the authority to appoint them, and every step in the progress of the proceeding necessary to their legal appointment.*

But when the plaintiff proved that the bonds were delivered under the trust-agreement, that gave the defendant a right to know what that agreement was, and whether a delivery of the bonds under that agreement was a legal, valid delivery of the bonds, so as to give them any inception in the hands of Mr. Parshall, or so as to give him any authority to sell them,—especially to a person who knew all about that agreement, as the plaintiff did. That agreement was, itself, enough to show that the plaintiff was not a *bona fide* holder of the coupons, when he admits that he knew all about it. These points are raised by the seventh and eighth assignments of error.

VII.

The Circuit Court erred in deciding that the plaintiff had a right to recover on the coupons which fell due on the 1st day of October, 1872, the interest upon said bonds

from their date to the time when said coupons were made payable.

Each of these coupons was made for the sum of $35, being the interest on the bond for six months. The interest on each bond from its date to the 1st day of October, 1872, was $26.10. Each of these coupons is made for $8.90 more than the amount of the interest on the bond. The plaintiff conceded he could not recover anything more than the interest on the bonds. But could he recover anything on these coupons, which were issued for an unauthorized amount?

It need not be disputed that, if the bonds were valid, the owner of the bonds might recover the lawful interest during this period. But the plaintiff did not own the bonds. He sued upon the coupons as separate instruments detached from the bonds. These coupons, which were excessive in amount, were not made according to the statute, but were executed in violation of it. The commissioners had no authority or power to issue them for the amount specified in them. Can the plaintiff recover upon them, as separate instruments, having an independent force, when severed from the bonds? I submit he cannot.

Dillon says: "Respecting the mode in which contracts by corporations shall be made, it is important to observe that when, as is sometimes the case, the mode of contracting is specially and plainly prescribed and limited; that mode is exclusive and must be pursued or the contract will not bind the corporation." (Dillon on Mun. Corp., § 373). There are numerous authorities in support of this position. (*Friend* v. *Dennett*, 4 C. B., N. S., 576; *Head* v. *Insurance Co.*, 2 Cranch., 127; *Zottman* v. *San Francisco*, 20 Cal., 96; *Day* v. *Jersey City*, 19 N. J. Eq., 412; *Homersham* v. *Waterworks Co.*, 4 Eng. L. & Eq., 426).

But no court has ever held that such a departure from the statute as this could be tolerated.

I do not wish to dwell upon this point, because it seems to me that all the bonds and coupons are void; but if the court should differ with me as to that conclusion, I am not justified in submitting the case without insisting that

these coupons, upon which the plaintiff has recovered the sum of $3,973.20, are void. This point is raised by the fifth assignment of error.

VIII.

The Circuit Court erred in admitting in evidence the resolution of the board of directors of the railroad company, "That the terminus of the Sodus Bay, Corning and New York Railroad Company be, and the same is, fixed at Nicholas Point, on said Sodus Bay." (See Record, page 72).

There could be no location of said railroad made by a mere resolution of the board of directors of the company; but in order to effect such location said board of directors must cause to be made and filed in the office of the clerk of the county in which such railroad was to be located, a map and profile of such railroad, with the certificate of location thereon, determining and fixing the location of said railroad in said county.

Chap. 140 of Laws of 1850, §§ 14, 22, 23;
3 Edm. Stat. at Large, 21, 25;
In the Matter of Long Island R. R. Co., 45 N. Y., 364.

The object of this evidence was, to show that the northern terminus of the road had been fixed at Nicholas Point, so as to make it appear that the condition in the petition of the tax-payers had been complied with. But the evidence had no tendency to prove the fact. There could be no location effected in this way. The statute points out the mode in which the location must be made, and how it may be altered. The resolution was of no ac-

count whatever. It did not prove a location of the northern terminus of the road.

IX.

The town is not estopped from denying the validity of the bonds by the fact that the so-called commissioners received and have retained the certificate of stock of the railroad company.

1 The so-called commissioners, not having been legally appointed, are in no sense agents of the town, though they assumed to act as such.

2. Neither the town, nor any of its officers, has ever done anything in respect to these bonds, except to resist their payment from the beginning.

By section six of the act of 1869, it is provided that, "The treasurer (or other proper officer of such municipal corporation) shall have the custody of any railroad bonds or certificates of stock that may be subscribed for as aforesaid, and shall collect the interest upon such bonds, or the dividends upon such stock, as it becomes due or is made payable, and shall apply the same towards the payment of the interest from time to time becoming due upon the said bonds of said municipal corporation."

The certificate of stock in question was never delivered to any officer of the town. The record states, that "It was also proved that at the time of the issuing of the one hundred and thirty-five thousand dollars of bonds aforesaid, the stock of the railroad company for that amount was issued to the said commissioners, and that the same was still held by them; the certificate of which stock was produced by one of the commissioners on his examination as a witness." (See page 69).

3. There can be no estoppel where there is no authority in the pretended agents whose acts are claimed to work such estoppel.

4. The plaintiff is not a *bona fide* holder of the coupons, and he cannot avail himself of any facts by way of estoppel.

The judgment should be reversed, and a *venire de novo* awarded.

H. L. COMSTOCK,
Attorney and of Counsel
for the Plaintiff in Error.

SUPREME COURT

OF THE UNITED STATES.

No. 214.

EDGAR MUNSON,

Defendant in Error,

ads.

THE TOWN OF LYONS,

Plaintiff in Error.

Brief for the Defendant in Error.

Although the exceptions in this case are very numerous, and the assignments of error not much less so, the questions involved are few.

I shall not go through and answer each of the points in the brief of the plaintiff in error *seriatim*, but shall discuss some propositions which will, I think, be found to cover them.

The action was brought to recover upon three hundred and eight-seven coupons or interest warrants originally attached to one hundred and twenty-nine bonds issued by the plaintiff in error for one thousand dollars each, being the coupons for interest upon said bonds, due October 1st, 1872, and April and October 1st, 1873.

[For sake of brevity, I shall in the remainder of this brief speak of the parties by their designation in the Court below.]

The complaint in the action contained as many counts as there were bonds. It sets forth (in the first count, which may be taken as a sample of all) that under and by virtue of an Act of the Legislature of the State of New York, (referring to it,) and the amendments thereto, the defendant on or about the 17th day of May, 1872, duly executed its bond or writing obligatory, signed by the commissioners of the defendant, duly authorized for that purpose, and attested by the hand and seal of the Clerk of the County of Wayne, numbered one in the words and figures following to wit, and then sets forth the bond *in hæc verba*.

It then sets forth the coupons, for which recovery is sought, and a breach of the agreement of the bond and of the promise of the coupon by the non-payment of the interest due on the dates aforesaid.

The answer (fol. 49) contains a general denial of the allegations of the complaint except the citizenship of the parties, and the corporate character of the defendant. The other answers are of new matter, and set up certain alleged defects in the proceedings which resulted in the issuing of such bonds, and which will be considered hereafter.

The plaintiff proved and put in evidence what for brevity's sake will be called the bonding judgment roll, (or the bonding roll,) consisting of the tax payers' petition to the County Judge for the bonding of the town, and the proceedings thereon, which resulted in the judgment of the County Judge, determining the necessary facts authorizing such bonding, and appointing commissioners to execute such bonds. (This roll will be found from fol. 72 to 84 of the record.)

The plaintiff proved the taking of the oath of office by the commissioners, the incorporation of the Sodus Bay,

Corning and New York Railroad Company (the corporation in aid of which the bonds were issued); the subscription of the town for stock and the issue of stock to it, in consideration of such subscription; the purchase of the coupons by the plaintiff, the interest thereon; and rested its case.

The defendant proved an agreement between the town and the Rail Road Company, by which Mr. Parshall was to see to the application of the bonds, or the expenditure of the proceeds thereof upon a certain part of the road.

The Judge at the Circuit subsequently ruled that there was no defense set up in the pleadings arising under this agreement.

The Court directed a verdict for the amount of the coupons, with interest, and reserved the questions of law for consideration upon the plaintiff's motion for judgment on the verdict. After argument he directed judgment in favor of the plaintiff.

FIRST.

The petition of the tax payers of the town, that the same should be bonded in aid of the Rail Road Company, was in all respects strictly regular, and was drawn in conformity with the Statute.

It is attacked on the ground that there are two conditions in the petition, either of which render the same void.

First. Because it contains the words: *Provided the terminus of said road is made at Nicholas Point on said bay (Great Sodus Bay), in the town of Huron.*

Second. Because it contains the words: *It is understood that the stock so to be taken is to em-*

brace and include the stock now already subscribed and taken by persons residing in said town of Lyons, amounting to the sum of sixteen thousand and four hundred dollars.

There are several answers to this position of the defendant, some of which are peculiar to each, and some common to both.

We will take up the first class of answers, and the last paragraph complained of first.

Our first suggestion in reference to this is, that it is not a condition nor even an agreement. It is at most a mere expression of a wish or desire, which the Commissioners may or may not comply with, as they shall be advised that the same is proper or not.

A condition is a clause in an instrument which has for its object to suspend, rescind or modify its operation. It is usually expressed by such words as, provided that, upon condition, or the like, and may be either precedent or subsequent. If precedent, it prevents the instrument having effect until the event provided for has happened. If subsequent, it suspends or destroys the instrument upon the happening of the event provided for.

Tested then by its language or its subject matter, this clause is not a condition. It is not framed in apt words to make it such, and the subject matter is something that must occur after the petition has accomplished its purpose, ripened into a judgment, and the bonds have been issued.

It is of course not an agreement, because the petition is unilateral, and there is no party in existence to agree with the petitioners. It must therefore be what we have called it, a request or

direction to the Commissioners. If it is, as is claimed, illegal, then it will be rejected as surplusage, and inconsistent with the main purpose of the petition, and the same will be upheld in accordance with two well settled rules of law, that Courts will be astute so to construe every instrument, that it shall be upheld rather than that it shall fail; and the other expressed in the maxim, *Res magis valeat quam pereat.*

But this direction is strictly legal and proper, and was properly expressed in the petition. By the laws of 1869, under which the proceeding is had, Chap. 907, page 2303, Sec. 5, it is provided that a majority of the tax payers hereby petition that corporations may create its bonds, and invest "*the same or proceeds thereof in the stock or bonds, as said petition shall direct, of such Rail Road Company in this State, as may be named in the petition.*"

By section 5 the Commissioners are to subscribe for the stock and exchange the bonds therefor, or they may "*sell the bonds and invest the proceeds thereof in such stock or bonds of such Rail Road Company as may be directed in the petition.*" Assuredly here is the warrant for this clause in the very language of the act.

The provision created no conflict of interest among petitioners, as all were alike. It could, therefore, work no fraud among, or upon tax payers.

It placed no restrictions upon the Rail Road Company, and hence was not against public policy.

The petition must be tested by this fact, whether it contains all the provisions required by Statute. In this case take the Statute, and it will be seen

brace and include the stock now already subscribed and taken by persons residing in said town of Lyons, amounting to the sum of sixteen thousand and four hundred dollars.

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The provision created no conflict of interest among petitioners, as all were alike. It could, therefore, work no fraud among, or upon tax payers.

It placed no restrictions upon the Rail Road Company, and hence was not against public policy.

The petition must be tested by this fact, whether it contains all the provisions required by Statute. In this case take the Statute, and it will be seen

that all of its requirements are observed in the petition.

Whatever else it may contain, not in conflict with any of its necessary provisions, does not, and cannot affect the question of jurisdiction.

Such provisions may be immaterial or otherwise —they may be illegal, or totally void—but this cannot touch the question of jurisdiction. This must be determined by whether it contains all the Statute requires—*not whether it contains something the Statute does not require.*

As to the paragraph in reference to the terminus—

The clause in the petition, and in the Articles of Association of the Rail Road Company, are the same. (See Extract from Articles of Association, folio 87, page 66.) The one fixes the terminus on Great Sodus Bay, the other at Nicholas Point, on Great Sodus Bay. The two suggest the same thing, and the expression was doubtless regarded by the petitioners as expressing the same thought in different language.

However this might be in comparing the original articles with the petition, it is made clear when we take into consideration the resolution of November, 1870 (folio 102), long before the petition was presented, and before it was signed; by which the terminus was fixed at precisely the same point as that mentioned in the petition.

There is no *conflict* whatever. The only difference is that the petition specifies the particular point on Sodus Bay—the articles do not. Hence, to locate the terminus at Nicholas Point, *conforms exactly* to the articles of association.

There is no reason or law for holding that a

provision in a petition requiring the road to be built where the articles of association require it shall be built, will vitiate it.

Suppose the petition had contained a provision, or condition, that the bonds of the town be issued for the stock of the road, provided it located its road bed through the county of Wayne? The whole proceeding as to bonding, is based upon the assumption that the road is to go where its charter provides. How absurd to hold that such a provision invalidates the petition.

We cite this illustration to show that the mere fact of a condition in form, which is not material, can amount to nothing, and yet the reasoning on the other side applies to a condition of this character, just as strongly as any other.

People vs. Hewitt, 5 Lansing, 89.

The test of the condition is, does it *conflict* with the charter—does it attempt to impose any restrictions not authorized by the charter? If it does, it is void. If it does not, it is valid, and authorized by the Statute.

Take the case of

The People vs. The Adirondac Company

as an illustration.

In that case the charter did not authorize the Company to construct their road through St. Lawrence County. The petition required it to do so, and was on condition that the road be laid through St. Lawrence County.

It required the Rail Road to do what it had no power to do—imposed a construction impossible to perform, and *was for that reason void.*

We next submit that this provision was exactly in accordance with law. By Chap. 507 of the Laws of 1870, page 1148, it is provided that the Commissioners may enter into any agreement with the Rail Road Company, limiting and defining the times when the bonds of the town shall be delivered, and the places where, and the purposes for which such bonds shall be applied or used. That this Statute bears the construction which we put upon it, we have very high, if not the highest, judicial authority. The case of

The People ex. rel., Hoag vs. Peck, 4 Lansing, 528.

was a case where the petition expressed the condition that the Road which the petitioners proposed to aid, should be built upon a specified route. Speaking in reference to this objection, Judge Daniels says, first, that it is cured by the Laws of 1871, "*and the condition would probably have been just as valid under chapter 507 of the Laws of 1870, if the act of 1871 did not apply to these proceedings, for by that act it was provided that the Rail Road Company might enter into arrangement with the Commissioners, which, among other things, should limit or define the place or places where, and the purposes for which the bonds or their proceeds should be applied or used.*

Laws of 1870, 1148.

For the power to make such an agreement was manifestly conferred for the benefit of the taxpayers themselves, and they had the right, therefore, to insist upon it that it should be observed and made use of according to their direction by the Commissioners, who might be appointed in the proceedings. And the most practical mode of giving that direction, was by its insertion in the petition, so that it might become the basis of the authority of the Commissioners, and operate as a restriction on that authority."

The case of

The People vs. The Adirondac R. R. Co.,

upon which the defendant so strongly relies, is not an authority against us for two reasons, first, the one stated by Judge Daniels in his opinion, that, "These Statutes distinguish the present case from that of *The People vs. The Adirondac Rail Road Company*, relied upon by the counsel for the relator, in which it was held that the Statute did not provide for a conditional petition, for they were enacted after the decision was made, which was reviewed in that case, and their object seems to have been, in part at least, to relieve the proceedings from the rule adopted by that decision."

And second, that was a case in which it was sought to aid a Rail Road Company that was incapacitated to receive such aid. The petition expressed that aid was to be given for the construction of the Company's Rail Road from the River St. Lawrence at Ogdensburgh, to Saratoga Springs, and the Company had no legal right or power to construct such road, and of course not to accept the grant. That is what, and all that this case decides.

See case reported in Supreme Court, 57 Barbour, 656, and MS. copy of Judge Allen's opinion, herewith submitted.

Nor are the cases of

Turnpike Co. vs. North, 1 Hill, 518, and
Plank Road Co. vs. Payne, 15 N. Y., 583,

which hold that a conditional subscription for the stock of a turnpike or plank road is void as against public policy, in that it may lead the Company to locate its line in a manner not in

accordance with the public interest in conflict with our case. Except for these decisions, we should suppose that persons whose interest or caprice led them to subscribe for stock upon condition that a given line or terminus should be adopted, might properly do so, but certainly where the Company had already fixed its terminus or route in accordance with the view expressed in the petition, the argument upon which those cases were based, fails.

Those were cases of conditional subscriptions for stock—this is a case of a conditioned authority to *subscribe* for stock.

In those cases, part of the subscriptions were conditioned—part absolute—thus creating a conflict of interests, which might work a fraud upon those who had subscribed absolutely.

Here the subscriptions when made, were to be all absolute, and all were to stand upon the same footing.

In those cases the subscriptions were not to be binding until the road did certain things.

Here they were to be valid and binding as soon as made.

In those cases the subscriptions were antecedent to the location of the road, and hence might work fraud, and contravene public policy in the location of the road.

Here the subscriptions were to be subsequent to location—absolute in terms, and not liable to abuses.

Those cases were decided upon two principles—1st, Liability to work fraud upon unconditional subscribers as against public policy. 2d, The

Company might be prevented from locating its road where public interests required.

In answer we say :

First—That the subscriptions are not to be made till after location; and all subscribers stand on same principle, there was no possibility of fraud.

Second—That the road being already located at time of subscription, and the subscriptions being absolute, there could be no influencing by the subscription of the location contrary to public interest—in other words, no violation of public policy.

If it be claimed that like objections lie against a conditioned authority to subscribe, we answer—

There can be no stronger reasons against a town's imposing conditions upon its agents as to subscribing for stock, than against an individual.

When has a Court of Justice questioned the right of an individual to impose such conditions, and limit the power of his agents?

The right of an individual to do this, is simply the right of choice as to whether he will take a particular Rail Road stock or not, and no legislature has power to control him in the exercise of this right.

The whole principle and spirit of the bonding laws is that municipal corporations may aid in construction of such roads as will especially benefit them. Whether a particular town will be benefited, depends entirely upon the location of the road, or it may be its terminus.

A proposition is made to a particular town to aid in the construction of a Rail Road. Does

natural justice or public policy require that this question must be answered unconditionally, without regard to location, leaving that question entirely in the hands of the Rail Road Company?

Is it not more just and equal that the same liberty be awarded to the town as to the individual, and it be allowed to answer, we will aid in construction of your road, provided you locate it so as to be of benefit to us. If you pass it through certain specified business centres of our town, or terminate it at a certain point, in which event it will be of great service to our people, we will aid your enterprise—otherwise, not.

We submit, that instead of being against public policy to allow this, it subserves public policy, and aids in carrying into effect the spirit and intention of the law. The Legislature has adopted this as the true way.

I have discussed this question thus far the same as though it had arisen upon *certiorari* or other direct proceeding, to review the decision of the County Judge. I now say,

SECOND,

That the petition was sufficient to give the County Judge jurisdiction, and his decision thereon cannot be reviewed collaterally.

It will be observed by reference to the Statutes which are printed at length in the points of the plaintiff in error, that they have clothed the County Judge with all the functions of a tribunal, and his determination with the qualities of a judgment.

The proceedings before him, and his determi-

nation thereon, may be reviewed by *certiorari*, and reversed, affirmed, modified, or remanded back.

The question of the sufficiency of the petition arose at the threshhold of the proceedings, and had necessarily to be decided by the County Judge. It won't do now and in this action to say that he decided wrong. The power to decide, which is only another form of saying the jurisdiction to determine, was in the Judge, and his decision must conclude all parties until it is reversed. It is no answer to say that he decided wrong. The power to decide implies that the decision may not be correct, but it is the decision of a duly constituted tribunal, and must stand as the law for the parties until, by proper proceedings, it has been reversed or set aside.

Where an inferior or limited tribunal has jurisdiction of the subject matter of a proceeding before it and the parties, its decisions are as conclusive when called in question collaterally as those of a Court of Superior or General jurisdiction.

Very many cases to this effect might be cited. I shall content myself with referring to

Thompson vs. Tolmie, 2 Peters, 157.
Brittain vs. Kinnaird, 1 Brod. and Bing., 432.

It cannot be doubted that the County Judge had jurisdiction of the subject matter of bonding the town. Whether the petition before him was signed by the requisite number of tax payers, or was in proper form, or executed in the proper manner, were questions which he must decide, and upon which his decision is conclusive as to all the world until it be reversed or annulled by a direct proceeding.

It is not necessary that I should insist that if

no petition were presented to him, his decision, that the town should be bonded, could not be attacked, because until that was done, the judicial function would not be called into operation; but when a petition is presented, the question as to whether it is sufficient is as much within his judicial province to determine as whether it is executed by the proper number of subscribers.

It will be seen that all of the cases cited by the counsel for the plaintiff in error, are cases of direct proceeding to review the determination of the County Judge.

There is a class of cases which may reconcile the contention between the counsel for the plaintiff in error and myself. They are those which have arisen upon applications against fraudulent and absconding debtors, under Statutes which require in substance that to authorize the proceeding, evidence in the shape of affidavits or petitions of the fraud or the absconding shall be laid before the officer having jurisdiction upon such evidence, to issue the process. And in which cases it has been held, as I believe, universally, that if the affidavits or petitions were such as to require the exercise of the judgment of the officer as to their sufficiency, his judgment thereon was conclusive when called in question collaterally, although on a direct proceeding to review the same, that decision would be reversed.

The case of

Skinnion vs. Kelley, 18 N. Y., 355,
Van Alstyne vs. Erwine, 1 Kernan, 331–340,
Matter of Falkner, 4 Hill, 598,

are cases illustrating this principle.

The counsel has said on page 82 of his brief: "It is not submitted to the Judge to determine "upon evidence whether the petition is in con-

"formity with the Statute. All he has to do in "this respect is to compare the statements in the "petition with the requirements of the Statute, "and see whether those statements conform to "such requirements."

I answer, exactly so; and such determination requires the exercise of the judicial function, and when once decided by the officer, is conclusive until reversed.

It would be intolerable, as well as illogical, to claim that that question was opened every time an action upon bonds, founded upon such determination, was brought into Court.

To illustrate, the counsel in this case contends that certain clauses in the petition are illegal and improper. I have contended with such ability as I could, that those clauses were harmless or legal. That question the County Judge had to decide. It was eminently a question of law. It called in question the exercise of his judgment. His decision has been acquiesced in until this attempt to review it collaterally. I insist that it cannot be done.

The counsel concedes that his decision as to the requisite number of signers cannot be overhauled. Why not? It is quite as much of a jurisdictional question as whether the petition conforms to the Statute. One requires the exercise of the judicial function in determining a question of fact; the other requires the exercise of the same function in the construction of writings. The law says, as I insist, that where this function is called into exercise, the determination of the officer is conclusive unless reversed. The counsel says: No; his determination upon the weight of evidence as to a matter of fact, is; but his determination as to the true construction of a written instrument, is open for review at all times. I respect-

fully submit that his claim is as unfounded in law as it is illogical in fact.

THIRD.

The proceedings before the County Judge, commenced under the Act of 1869, were properly continued and completed under the Act of 1871.

The Statute of 1871 did not repeal the statute of 1869, but merely amended it.

Such is its title, and such is clear from its subject matter.

Proceedings commenced under the Act of 1869, are preserved, and are to be carried on under the Statute of 1871, after it came into existence, so far as the same is applicable. For this I wish no better authority than the cases of

Ely vs. Holton, 15 N. Y., 595, and
Moore vs. Mausert, 49 N. Y., 332.

FOURTH.

The defendant cannot set up the invalidity of its subscription or of the judgment that authorized its officers to make it.

It has received and still holds the stock of the company which was issued to it, as the consideration of the bonds that it issued.

The principle upon which I rely has often been asserted, and may be summed up in the one short sentence, "*A party cannot occupy inconsistent positions.*"

See Bigelow on Estoppels, page 578, and case cited page 582.

Since the decision of this case in the Circuit Court, the doctrine here contended for has been twice sanctioned by this Court.

See Commissioners of Johnson Co. vs. January, 4 Otto, 202.
County of Ray vs. Van Sickle, 6 Otto, 675–688.

FIFTH.

The validity of the bond is in no wise affected by the agreement between the Commissioners and the Rail Road Company. (See agreement, fol. 103, of the record.)

The sole object of that agreement was to secure more completely the construction of the road in that locality in which the town was specially interested. Certainly not an unlawful purpose without any legislation, but which is particularly provided for by Chap. 507, Laws of 1870, passed April 28 of that year, found on page 8 of the brief of the plaintiff in error; and by Section 5 of the Laws of 1871, to be found on page 13.

In addition, any question under this agreement was properly excluded by the Court, for the reason that the defendant's answer put in issue nothing but the formal execution of the bonds.

SIXTH.

That the Court was right in holding that the plaintiff could recover the interest due upon the bonds on the 1st day of October, 1872, from the

date of their issue and delivery, is settled by the case of

The Township of Rock Creek vs. Strong, 6 Otto, 271, and Commission of Marion Co. vs. Clark, 4 Otto, 278.

SEVENTH.

The judgment should be affirmed.

W. F. COGSWELL,

for Defendant in Error.

MAP OF THE STATE OF

MISSOURI

SHOWING COUNTIES, TOWNSHIPS, TOWNS POST OFFICES, RAIL ROADS, POST ROUTES,
MINERAL DEPOSITS &c

CONSTRUCTED FROM UNITED STATES SURVEYS AND OTHER OFFICIAL AND AUTHENTIC SOURCES,

By R.A.CAMPBELL, C.E.

The Mineral Deposits from the latest Geological Surveys of Swallow Pumpelly and Broadhead

Published by authority and under the auspices of
THE STATE BOARD OF IMMIGRATION,
ISIDOR BUSH, Secretary

1875

ENGRAVED & PRINTED BY R.A.CAMPBELL S.E.COR 5TH & OLIVE STS. ST LOUIS.

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SCALE
12 MILES TO AN INCH

1875

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SCALE

12 MILES TO AN INCH

EXPLANATIONS.

Classification of Sections

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

State Boundary
County "
Township Lines
Railroads
" located
Post Roads
County Seats
Towns, Post Offices and ○
Railroad Stations

Minerals:
Lead
Iron
Copper
Zinc
Nickel
Salt Springs
Chalybeate Springs
Geological Boundary

Lead Furnace
Iron "
Coal
Kaolin
Caves

ATCHISON
LEAVENWORTH
WYANDOTTE
KANSAS CITY
INDEPENDENCE
LAWRENCE
TOPEKA
OLATHE
PAOLA
OTTAWA
GARNETT
BURLINGTON
IOLA
FORT SCOTT
OSAWATOMIE
LA CYGNE
BUTLER
NEOSHO FALLS
MOUND CITY
NEVADA CITY
OSCEOLA
GIRARD
LAMAR
GREENFIELD
MARSHFIELD
SPRINGFIELD
MOUNT VERNON
NEOSHO
MONETT
CARTHAGE
JOPLIN
CARTHAGE
WARSAW
HUNTSVILLE
CARROLLTON
KEYTESVILLE
BROOKFIELD
MARSHALL
LEXINGTON
LIBERTY
RICHMOND
PLATTSBURG
GALLATIN
CHILLICOTHE
TRENTON
MILAN
UNIONVILLE
MEXICO
FULTON
JEFFERSON CITY
CALIFORNIA
VERSAILLES
TIPTON
WARRENSBURG
HARRISONVILLE
BOLIVAR
SALEM
WAYNESVILLE
LEBANON
HOUSTON
HARTVILLE
OZARK
AVA
GAINESVILLE
CARROLLTON
HARRISON
YELLVILLE
BENTONVILLE
EVENING SHADE
POWNATAN
SALEM
DONIPHAN
POPLAR BLUFF
WEST PLAINS
ALTON
THAYER
PIEDMONT
FARMINGTON
PERRYVILLE
JACKSON
CAPE GIRARDEAU
COMMERCE
CHARLESTON
SIKESTON
NEW MADRID
HICKMAN
TIPTONVILLE
UNION
CAIRO
DYERSBURGH
TROY
HILLSBORO
JEFFERSON CITY
WATERLOO
NASHVILLE
EDWARDSVILLE
GREENVILLE
VANDALIA
CARLYLE
ALTON
HILLSBORO
ST. LOUIS
MISSOURI
MISSISSIPPI
OHIO
ARKANSAS
TEXAS
KANSAS
INDIAN TERRITORY

Oct. Term, 1877.

The County of Macon
vs.
James F. Shores.

Error to Circuit Court
U. S. Western Dist. Mo.

Filed Oct. 7, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 129.—October Term, 1877.

The County of Macon, Plaintiff in Error, } In error to the Circuit Court of
vs. the United States for the West-
James F. Shores. ern District of Missouri.

Mr. Justice SWAYNE delivered the opinion of the Court.

The declaration in this case covers an hundred and eleven printed pages. Each count is upon a coupon averred to have been detached from a bond for one thousand dollars issued by the County of Macon on the 2d of May, 1870, and payable to the Missouri and Mississippi Railroad Company or bearer, at the National Bank of Commerce, in the city of New York, on the 2d day of May, 1890, with interest at the rate of eight per cent. per annum, to be paid semi-annually on the presentation of the coupons attached. It is further averred that the bond was issued pursuant to the orders of the County Court of Macon County in payment of the subscription to the stock of the railroad company, and was authorized by the act of the general assembly of the state, entitled "An act to incorporate the Missouri and Mississippi Railroad Company, approved February 20th, 1865," and that the bond so recites on its face.

It is also alleged that the defendant paid the interest on the bond for the year 1870, and that the plaintiff is the holder and bearer of the coupon for value. There are other averments which show the liability of the defendant and make the count good. The further counts are upon coupons taken from other bonds of the same issue. The counts are all alike *mutatis mutandis*.

The defendant filed a multitude of pleas. It is not necessary particularly to advert to any of them.

Upon the trial the defendant took an elaborate bill of exceptions.

Our remarks will be confined to the errors assigned.

The plaintiff had a right to prove that he was a bona fide holder of the coupons.

The petition averred the fact. It was denied by the answer. It is true the presumption of law, *prima facie*, was that the plaintiff was such holder. But if he chose to meet the issue by direct affirmative proof, it was clearly competent for him to do so.

The testimony tending to show fraud and irregularities touching the issuing of the bonds and in disposing of them was properly rejected. The plaintiff being a *bona fide* holder of the coupons, it was incompetent to affect his rights. He could not be expected to know, and was not bound to know, the facts sought to be established. So far as the testimony respected the action of the court, it was liable to the further objection that a court of record can speak, and its doings can be shown, only by the record. None of the evidence offered was of this character. Irrelevant and incompetent testimony should always be carefully excluded, because the tendency of both is to mislead and confuse the minds of the jury and thus defeat the ends of justice.

Th objection that the corporation was not organized within the time limited by the charter is unavailing. It is in effect a plea of nul tiel corporation. In Kaiser vs. The Trustees of Bremen, 16 Mo., 90, the supreme court of the state said:

"It cannot be shown in defence to a suit of a corporation that the charter was obtained by fraud; neither can it be shown that the charter has been forfeited by misuser or nonuser. Advantage can only be taken of such forfeiture by process on behalf of the state instituted directly against the corporation for the purpose of avoiding its charter, and individuals cannot avail themselves of it in collateral suits until it be judicially declared."—See, also, Smith vs. The County of Clarke, 54 Mo., 58, which is to the same effect. This case being a Missouri case, these authorities are conclusive.—Olcott vs. Bynum, 17 Wall., 58.

The learned counsel for the plaintiff in error could hardly have been serious in insisting that proof that the road authorized by the charter to be built "was a wild and visonary project" and that meetings of tax-payers denouncing the issuing of the bonds, was competent in the case as it stood for any purpose. No further remark upon the subject is necessary.

The proceedings in the case of Newmeyer and Clark vs. The Mo. and Miss. R. R. Co. et al., reported in 52 Mo., 81, were properly excluded

for two reasons. The case decided nothing finally. The bill of the complainants was demurred to by the defendants. The demurrer was overruled and the case remanded to the lower court. Whatever the result, it could not effect the rights of a bona fide purchaser of the bonds and coupons without notice.

The objection claimed to arise from the constitution of 1865, is without foundation. That instrument took effect on the 4th of July, 1865, and the act of incorporation on the 20th of February of that year. The constitution looked entirely to the future. Its language is:

"The general assembly *shall not* authorize, &c.," * * * "unless two-thirds of the qualified voters of such county, city or town, at a regular or special election *to be held* therein, *shall* assent thereto.—Const. Mo., section 14, article 11.

The act was in the past. The constitution, therefore, had no effect upon it. This point has been so decided by the Supreme Court of Missouri and by this court, following the adjudication of that tribunal.—The State vs. The Macon County Court, 41 Mo., 453; The State vs. Greene County et al., 54 Mo., 540; Henry County vs. Nicolay, decided by this court at the present term.

The 13th section of the charter authorized the county court to subscribe and issue the bonds. No limit is prescribed either as to the time or amount of the subscription.

The court instructed the jury to find for the plaintiff.

It appears that the evidence is all in the record. The plaintiff had shown a clear right to recover. The defendant had shown no defence. There was no question for the jury to pass upon.

Under these circumstances it is always competent for the court to instruct accordingly, and it is not error to do so.—The Merchants' Bank vs. The State Bank, 10 Wall., 604; Baltimore & Potomac R. R. Co. vs. Jones, decided at this term.

This court has repeatedly held that where a corporation has power under any circumstances to issue such securities, the *bona fide* taker has a right to presume they were issued under circumstances which gave the requisite authority, and that they are no more liable to be impeached for any infirmity, in the hands of the holder, than any other commercial paper.—Supervisors vs. Schenck, 5 Wall., 784.

The function of making the subscription and issuing the bonds was confided to the county court. They had jurisdiction over the entire subject. They were clothed with the power and duty to hear and determine. The power was exercised and the duty performed. In this case, as it is before us, the result is conclusive and the county is estopped to deny that such is its effect.—Lynde vs. The County, 16 Wall., 13.

Where a loss is to be suffered through the misconduct of an agent it should be borne by those who put it in his power to do the wrong rather than by a stranger.—Herne vs. Nichols, 1 Salkeld, 289; Merchants' Bank vs. State Bank, 10 Wall., 646.

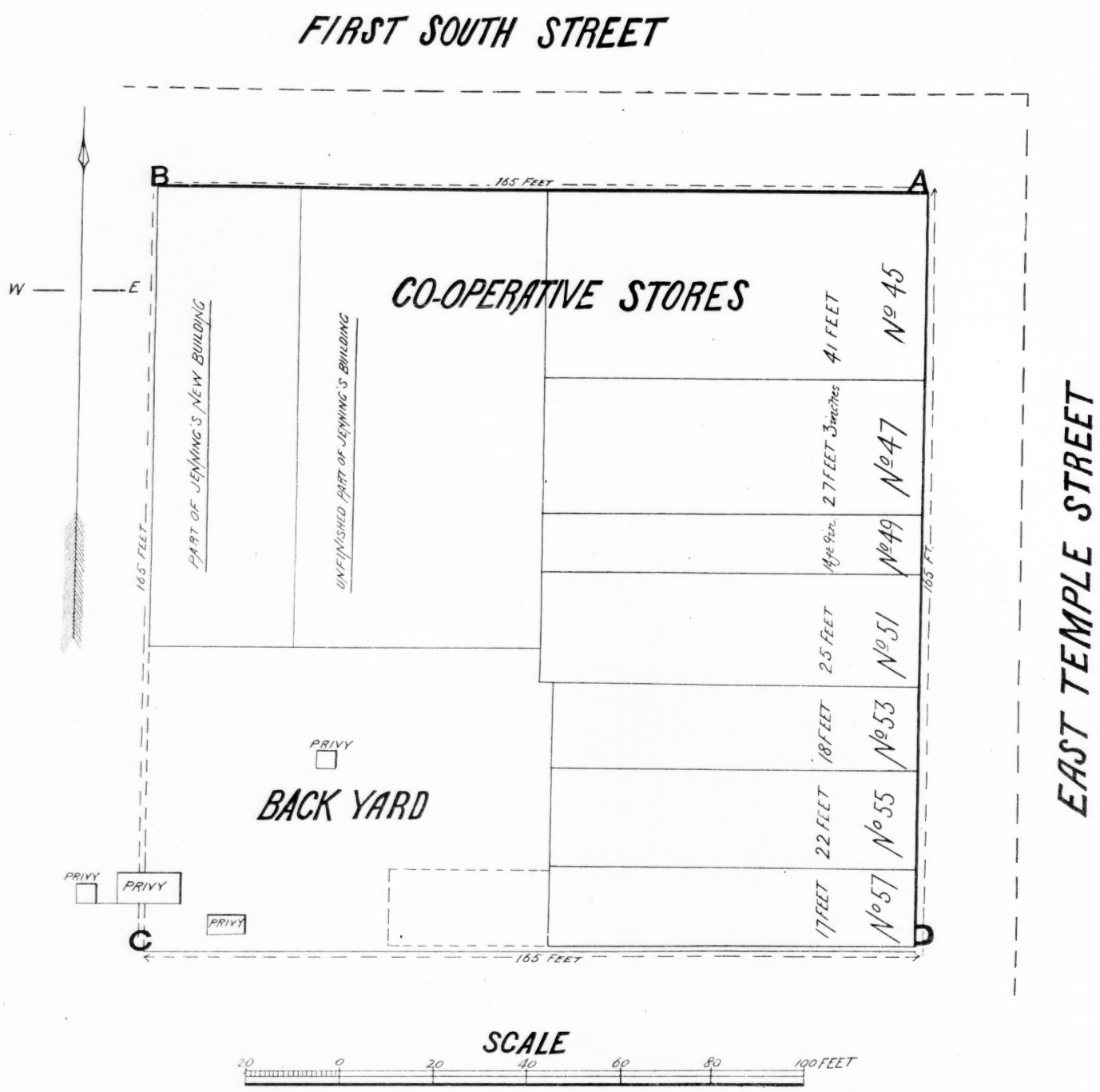
In the Steamboat Company vs. McCutchen and Collins, 13 Penn. St. Rep., 13, the company, which was a corporation, had occupied for a term agreed upon, as an office, premises belonging to the other parties. When sued for the rent the corporation set up as a defence that the contract was *ultra vires*, and claimed exemption from liability upon that ground. Coulter, justice, in the opinion of the court affirming the liability, said:

"Some things lie too deep in the common sense and common honesty of mankind to require either argument or authority to support them, and this, I think, is one of them."

The judgment of the circuit court is affirmed.

No 181 Springfield Ill
" 182 Cash Rec'd page 330

EXHIBIT "B"



PLAN OF EAST HALF OF LOT 6 IN BLOCK 69 OF PLAT A OF SALT LAKE CITY

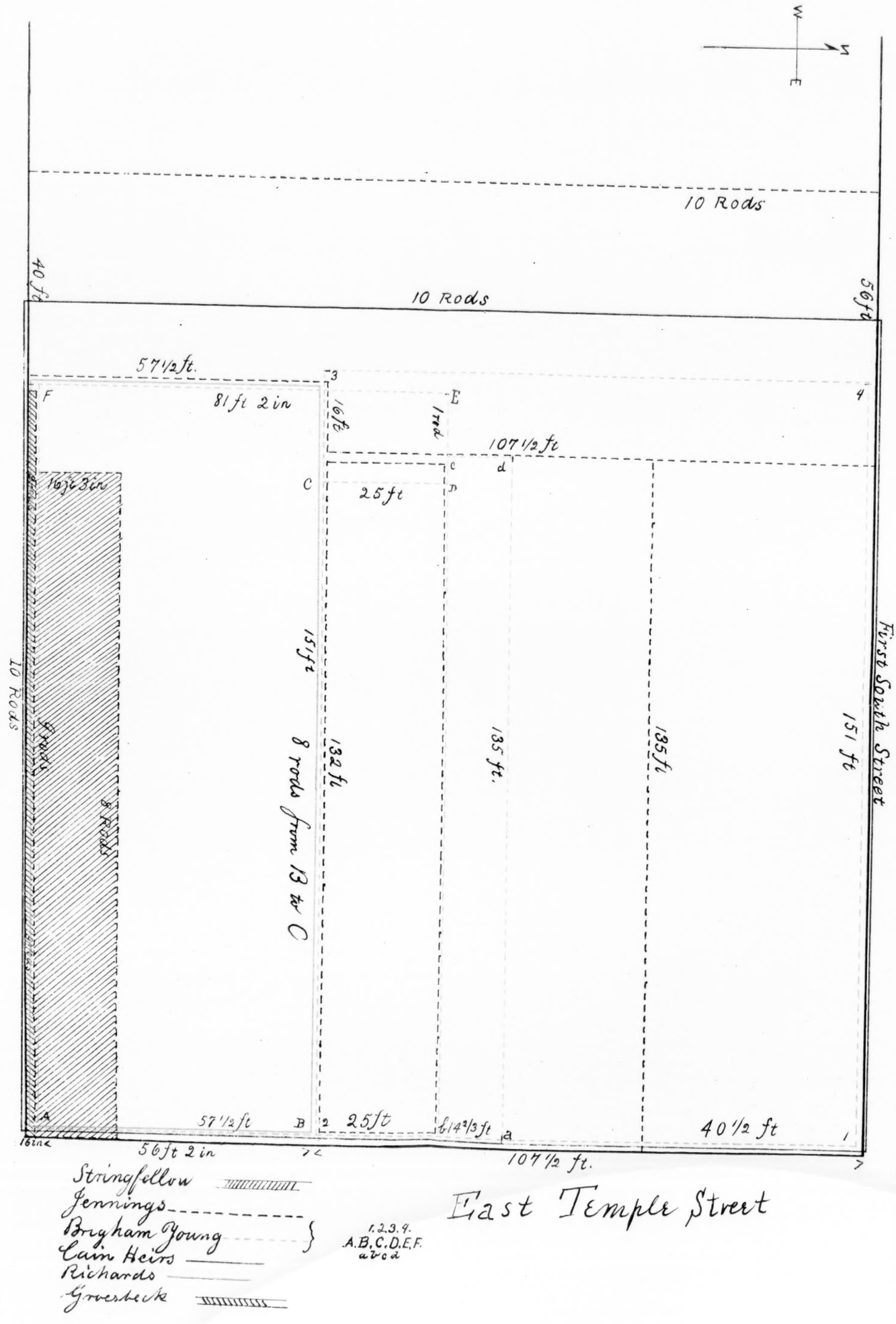
Filed May 28 1873
Jos. F. Newman
Clerk

No 181. Kingsbury vol Page 330.
" 182 " Cain "

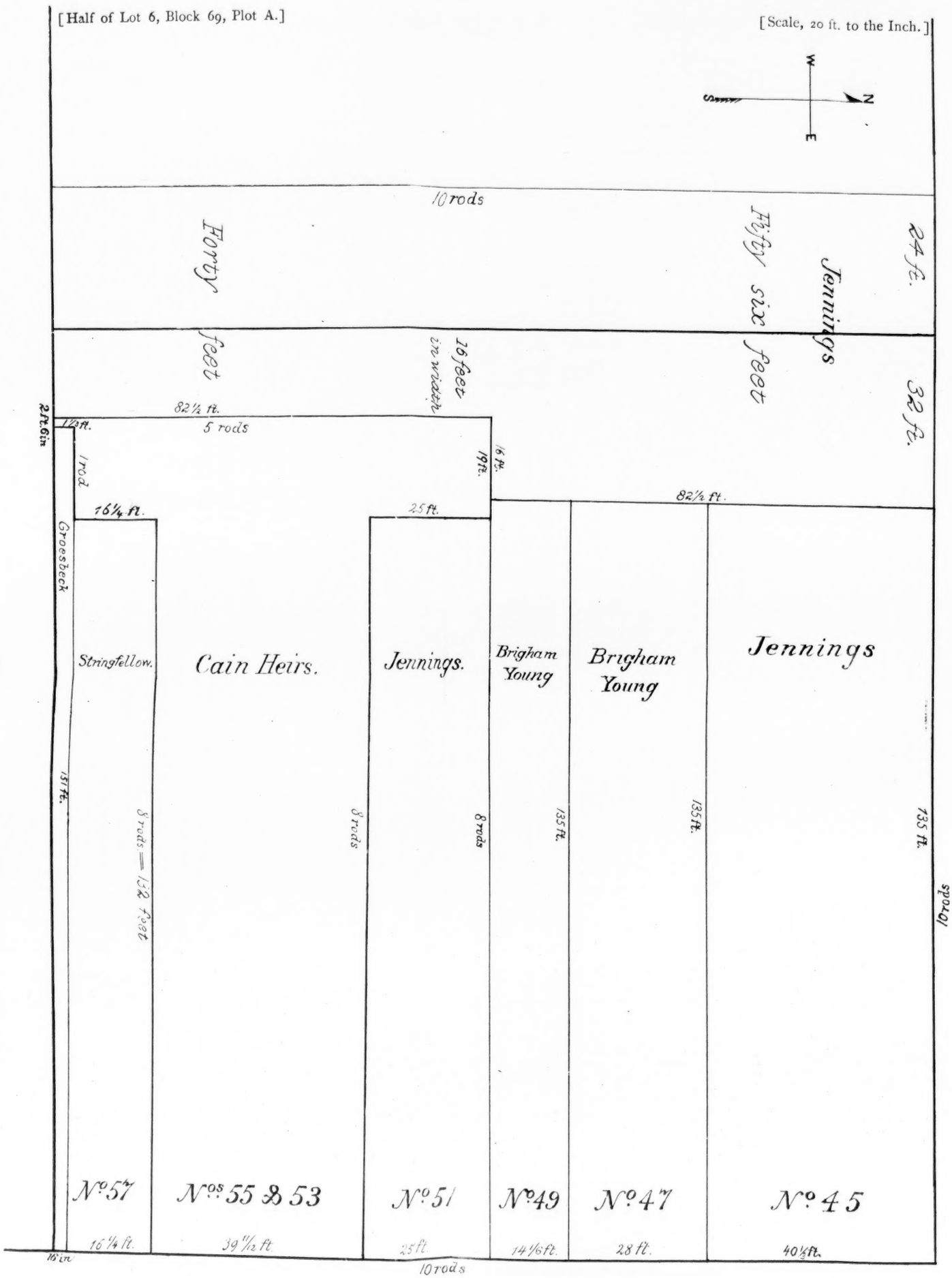
I. DECLARATORY STATEMENTS.

[Half of Lot 6, Block 69, Plot A.]

[Scale, 20 ft. to the Inch.]



II. DISTRIBUTION OF THE PROBATE COURT.



FIRST SOUTH STREET.

EAST TEMPLE STREET.

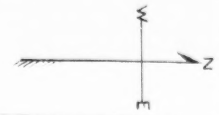
III. PLAN OF FENCES, BUILDINGS, ETC.,

Existing during the life-time of

JOSEPH CAIN.

[Half of Lot 6, Block 69, Plot A.]

[Scale, 20 ft. to the Inch.]



Blazzard

Awarded to Jennings (Eddins Sold to Price and Price Sold to Jennings)

Eddins House as located by Cain witnesses

West Half.

East Half.

Eddins Stable

West fence as located by Cain witnesses.

Eddins' House as located by himself and others

Back Corral

West fence as located by Richards and Taylor and Whitney (Cain's witnesses) Site of Wells, Fargo fence (Mrs. Cain etc)

(See note to page 45 or page 47)

Alley way

Lumber Pile of Cain's witnesses,

Log House built by Hinman (used as a stable by Richards)

First South Street.

20 ft. wide lane left open by Richards.

Piston

Butcher Shop occupied by Topham.

Partition fence as located by Parker (Cains witness) and Horne.

Awarded to Jennings

Awarded to Brigham Young

Awarded to Jennings

Big Ten

Bath House

Old Adobe House

Shed

Built by Hinman Occupied by Cain Richards' wives, Shaw etc.

House built by Mrs. Ogden

Cain's New House

No 57

Corral by Hinman & Eddins.

Fence built by Richards and Piston.

Nos 55 & 53

No. 51

No. 49

No. 47

No. 45.

Ward fence North.

10 Rods (165 ft.)

Ward fence-East

Note The location of the different improvements upon this plan was derived from the testimony (q.v.) Upon this plan was superimposed plan II, (Distribution of Probate Court) represented by the red lines.

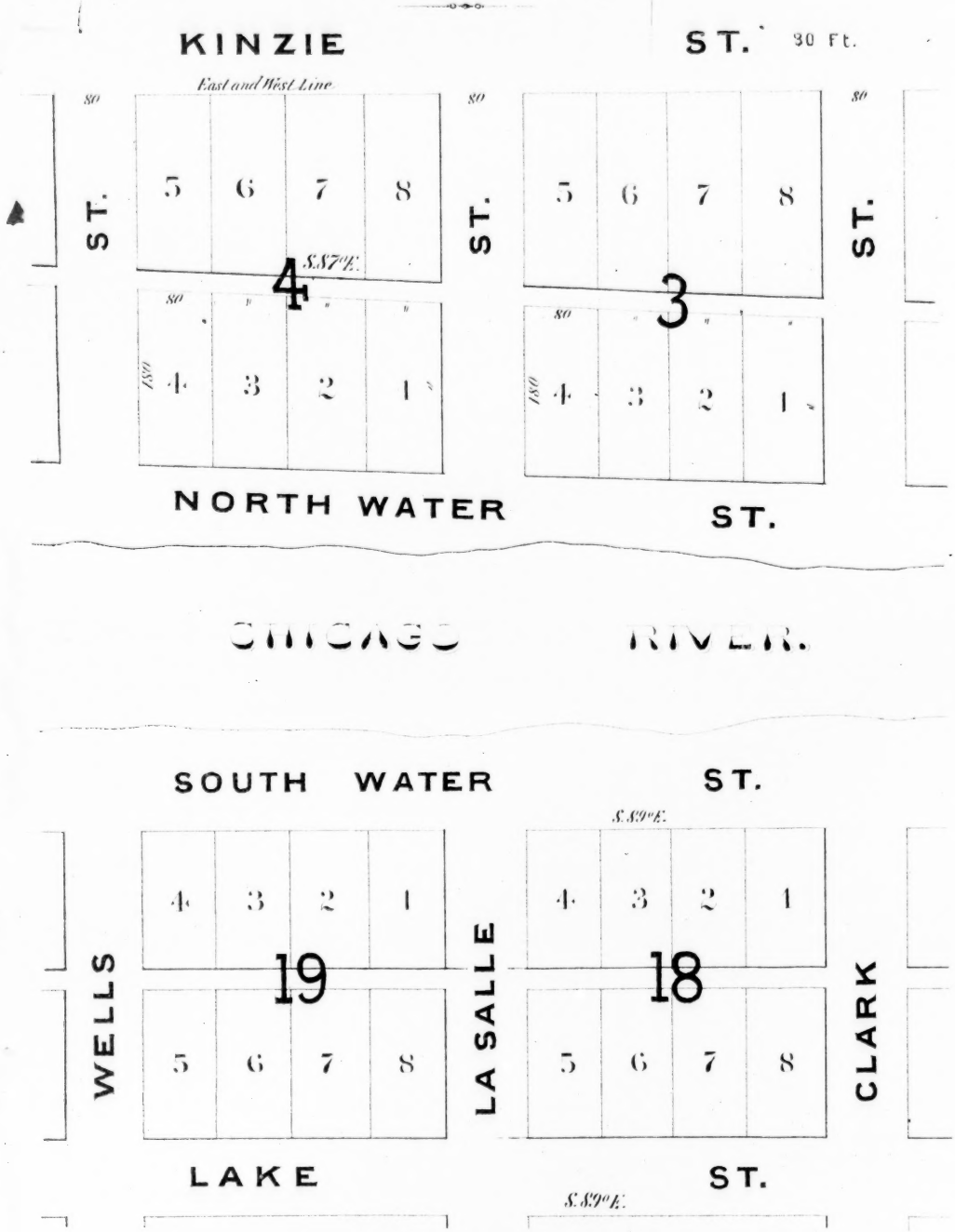
East Temple Street.

[For a description of the fences here represented see the accompanying note (infra).]

PART OF

"A MAP OF THE TOWN OF CHICAGO."

"By JAMES THOMPSON, August 4th, 1830."



"The streets are all 80 ft. wide, and the alleys 18 feet wide. This plat is laid down by a scale of 160 ft. to an inch. W. F. Thornton, W. B Archer and G. S. Hubbard, late Commissioners of the Illinois and Michigan Canal, certify that this map of the town of Chicago is the identical map by which they were governed in selling lots belonging to said town, on the 20th and following days of June last past. Chicago, May 22, 1837. Witness, Joel Manning, secretary to said Board, and his private seal, no official seal being provided at Chicago this 29th May, 1837.

"Filed for record May 29th, 1837, Vol. F. p. 297." Also new Vol H, pp. 111 and 112, which was a copy of original Vol. H

PLAT SHOWING

Waterlots,

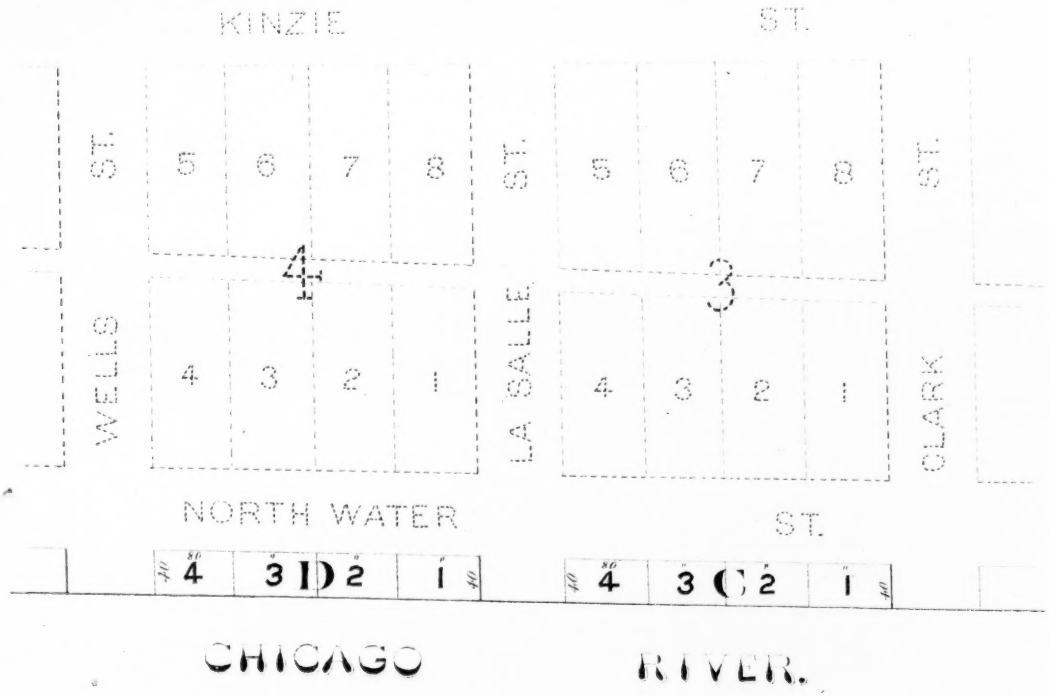
(NOW VACATED)

AS RECORDED BY THE TRUSTEES OF THE TOWN OF CHICAGO,

In Book "H" of Maps, p. 165,

recorded in 1848,

OPPOSITE BLOCKS 3 and 4, ORIGINAL TOWN.



PLAT SHOWING

Waterlots,

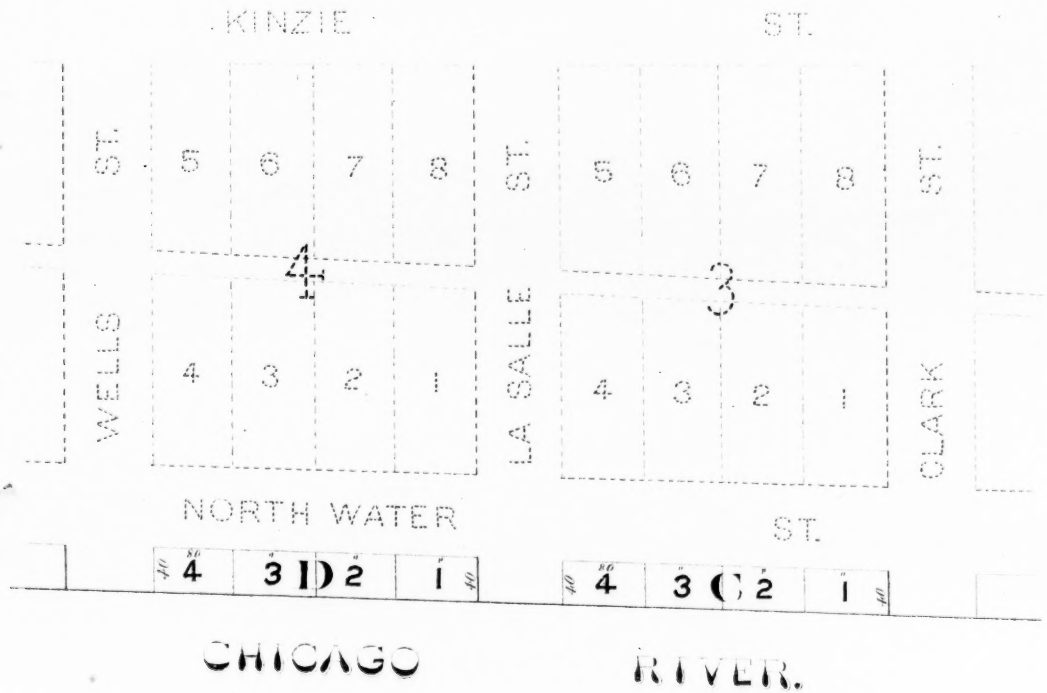
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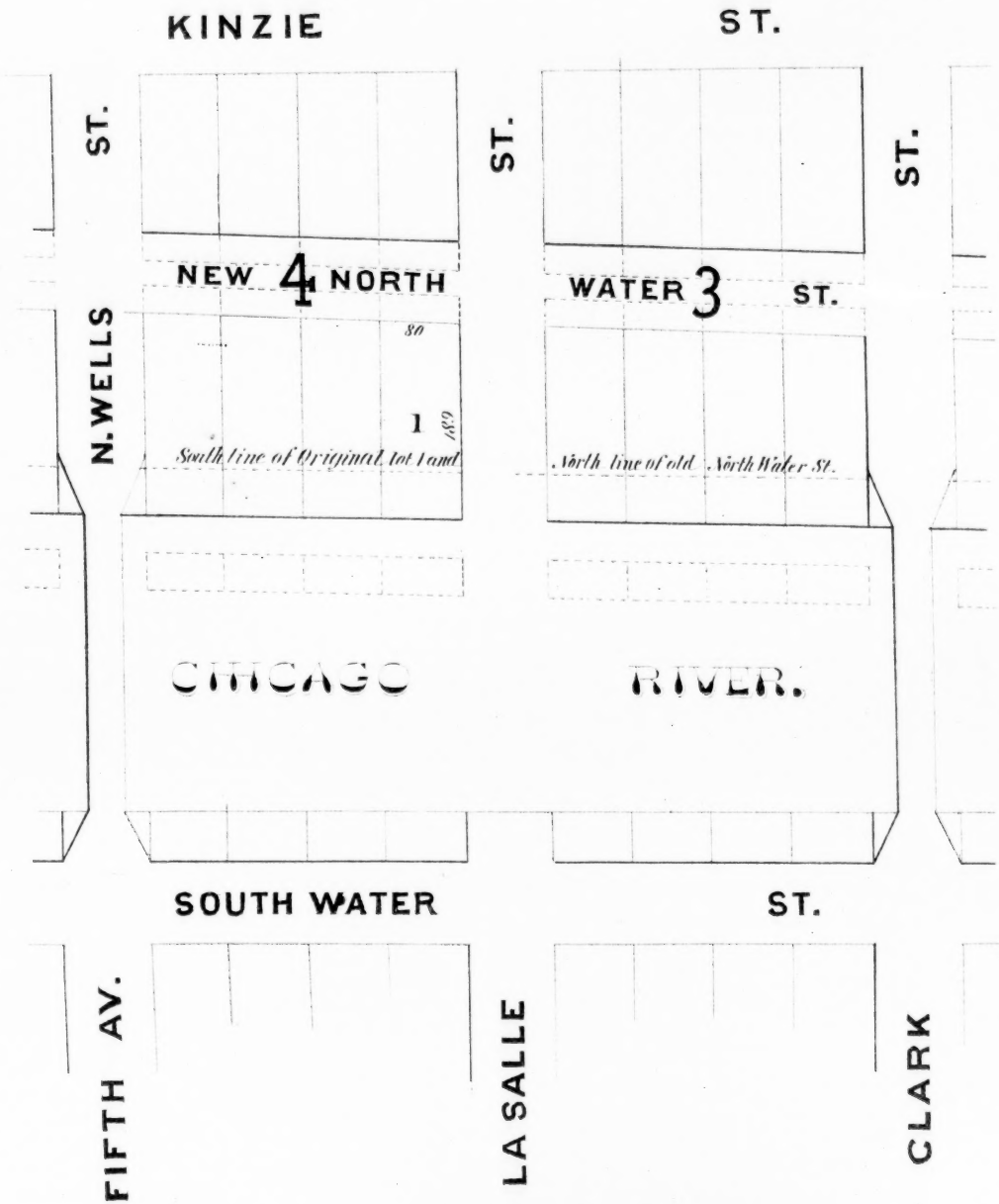


PLAT

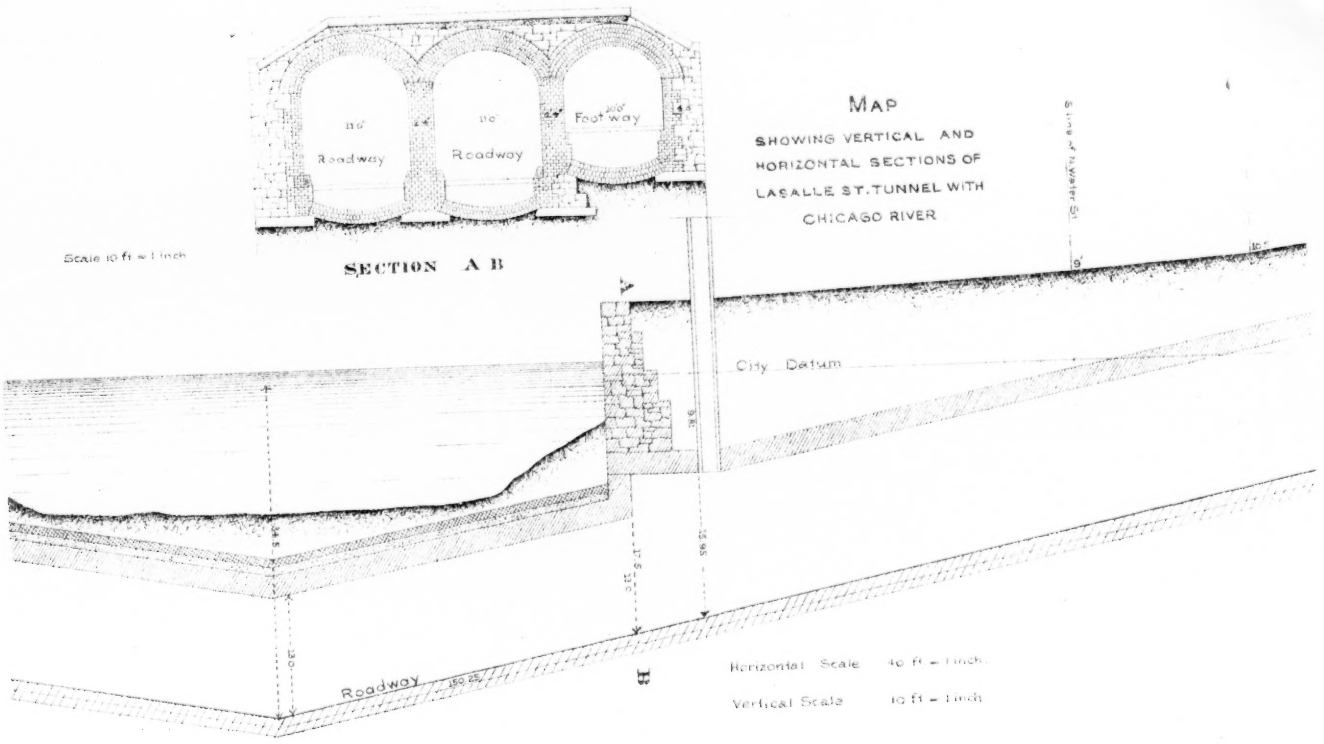
SHOWING PRESENT CONDITION

OF LOT 1, BLOCK 4. IN

ORIGINAL TOWN OF CHICAGO.



12


Roadway
Roadway
Footway
SECTION A B
Scale 10 ft = 1 inch
MAP
SHOWING VERTICAL AND
HORIZONTAL SECTIONS OF
LASALLE ST. TUNNEL WITH
CHICAGO RIVER
City Datum
A
B
Roadway
Horizontal Scale 40 ft = 1 inch
Vertical Scale 10 ft = 1 inch